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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Addendum

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND*

[11 October 1999]

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* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

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PART ONE : METROPOLITAN TERRITORY

Introduction

1. The United Kingdom Government is fully committed to promoting human rights. This includes giving effect to the rights in the international instruments which it has ratified. It has striven to comply with all the various requirements. It has adhered closely to reporting requirements and has assisted the visiting committees. It has also played an important part in the reform of the institutions and procedures established under the European Convention on Human Rights (ECHR), now codified in the 11th Protocol.

2. On of the first acts of the current administration, which came into power in May 1997, was to introduce major new legislation on human rights. The Human Rights Act 1998 incorporates into United Kingdom law the substantive rights and freedoms in the ECHR. Many Convention rights are already protected in statute and common law but, for the first time, British citizens will be able to secure all Convention rights through, and as interpreted by, UK Courts. This is a highly significant constitutional measure which is expected to have wide-ranging effects. It is the cornerstone of the Government's commitment to promoting wider awareness of human rights throughout the United Kingdom.

3. The Human Rights Act will be implemented in full on 2 October 2000. It works in three main ways.

- First, it places all public authorities (including central and local government, the police and the courts), under a statutory obligation to act compatibly with Convention rights, and allows a case to be brought in a UK court or tribunal against a public authority which fails to do so;

- Secondly, it requires that all legislation must be read and given effect compatibly with the Convention rights. If it is impossible to do so, the court may formally declare the legislation incompatible with the Convention (if the legislation is primary), or strike it down (if it is secondary). A formal declaration of incompatibility triggers a possible use of a special procedure allowing Ministers to amend the offending provisions. A Minister in charge of a Bill must now make a declaration, when introducing it, either that it is compatible with the Convention rights, or that he cannot make such a statement but wishes to proceed nonetheless;

- Finally, it requires UK courts and tribunals always to take account of Strasbourg caselaw. They will also be bound to develop the common law compatibly with Convention rights.

4. The United Kingdom considers that the Act will provide an effective remedy in domestic courts for breaches of the Convention. Citizens may still, however, apply to the Court after exhausting domestic remedies, and in ratifying the 11th Protocol in December 1994 the United Kingdom confirmed its acceptance of the right of individual petition as permanent and mandatory.

5. In July 1995, several members of the Committee examining the UK on its Fourth Report regretted that it had not incorporated the ECHR or the Covenant in domestic law, and had not acceded to the First Optional Protocol to the Covenant which gives the right of individual petition. It recommended that the then Government should review its position on the Protocol, and its reservations and derogation to the Convention (CCPR/C/Add.55, paragraphs 20-23).

6. In July 1997, the Government announced a comprehensive review of its policy on various international human rights instruments, with particular reference to those it had not ratified, or to

which it had derogations or reservations. The review was made public in March 1999 (Appendix 1 is an updated summary of the outcome). Reforming legislation had enabled the UK to accede to some of these measures, for example Protocol 6 of the ECHR and the Second Optional Protocol to the Covenant, both of which abolish the death penalty.

7. The review concluded that it would be wrong to divert the considerable resources needed for the commencement of the Human Rights Act, in order to prepare for the right of individual petition under the Covenant (or, indeed, under the conventions against torture or racial discrimination). It undertook, however, to reconsider this question when the Human Rights Act had been fully implemented and was operating satisfactorily.

8. The rest of this report describes the many ways in which the UK has responded to concerns expressed by the Committee, by non-governmental organisations, by Parliament and by the public generally. In this the Government has been very aware of the need for securing and, where necessary, balancing, the substantive rights in the Covenant, and ensuring that mechanisms for their enforcement in various spheres of life are working. This includes not only new legislation and reform of policy and practice, but the setting up of many forms of independent oversight, monitoring and appeal, which are described under the relevant Covenant articles.

Article 1 - Self-determination

9. The United Kingdom's long-standing policy of promoting self-government in its Overseas (formerly "Dependent") Territories, its support in the United Nations for the right of self-determination, and the exercise of that right within the United Kingdom itself have been fully reported in the United Kingdom's earlier reports under the Covenant.

10. The United Kingdom's current policies on the enjoyment of the right to self-determination in the Overseas Territories are covered in the Introduction to Part III of this Report, and the annexes to it set out the position in each Overseas Territory.

Devolution

11. Since May 1997, the Government has introduced substantial devolution of powers to Scotland and Wales, as part of its wider programme of constitutional reform. (The position in Northern Ireland is discussed in paragraphs 12-14 below). Devolution will bring decision-making closer to the people. It represents an opportunity for the people of Northern Ireland, Scotland and Wales to have their own democratically elected and powerful assemblies, while maintaining the close links which have existed for centuries within the United Kingdom This will give people a greater say in their day to day affairs and will ensure more open, accessible and accountable government. In exercising their powers, the three devolved administrations are required by law to comply with the rights in the European Convention on Human Rights. The sovereignty of the Westminster Parliament has been retained for those matters which affect the whole of the United Kingdom, like foreign affairs, defence and macro-economic policy.

Northern Ireland

12. Devolution in Northern Ireland is bound up with the talks which have been taking place between the parties on the future of the Province. They concluded on 10 April 1998 with the Belfast ("Good Friday") Agreement. In the Agreement, the British and Irish Governments recognise the legitimacy of the freely exercised choice of a majority of the people of Northern Ireland on its status, whether it be to support the Union with Great Britain or a sovereign united

Ireland. This was confirmed in the British-Irish Agreement which was signed by the two Governments at the same time (Appendix 2). This principle of consent is also reflected in the Northern Ireland Act 1998 (Appendix 3) which provides that a poll should be held if it appears likely to the Secretary of State for Northern Ireland that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland. If the poll favoured a United Ireland, the Secretary of State would lay before Parliament proposals, agreed with the Irish Government, to give effect to that union.

13. The present freely exercised choice of a majority of the people of Northern Ireland is to maintain the Union. Northern Ireland's continued position as part of the United Kingdom reflects and relies upon that wish.

14. The British-Irish Agreement, relevant sections of the Northern Ireland Act, and amendments to the Irish constitution reflecting the same principle, will come into effect at the moment of transfer of powers to the new Northern Ireland Assembly, established following the Belfast Agreement.

Scotland

15. The White Paper, *Scotland's Parliament* (Appendix 4), outlined the Government's proposals for devolution in Scotland. The views of people in Scotland were sought in a referendum in September 1997, and almost three-quarters of those who voted supported the creation of a Parliament. The Scotland Act 1998 (Appendix 5) creates the Scottish Parliament which has 129 members (73 elected by a simple majority system, and 56 additional members). The Parliament assumed its powers on 1 July 1999 and is able to make laws for Scotland on a wide range of devolved matters. These include agriculture, economic development, education, environment, fisheries, food standards, forestry, health, housing, local government, planning, social work, tourism and some aspects of transport policy. The Scottish Parliament is responsible for allocating a budget of £14 billion.

Wales

16. In July 1997, the Government published *A Voice for Wales: The Government's Proposals for a Welsh Assembly* (Appendix 6). These were endorsed in a referendum in Wales in September 1997. The Government of Wales Act 1998 provides for the establishment of a National Assembly for Wales. The National Assembly has 60 members, 40 of whom were elected by simple majority in May 1999, with 20 additional members. The National Assembly assumed its responsibilities on 1 July 1999.

17. The Act provides for a scheme of executive devolution. The National Assembly assumes responsibility for a wide range of matters previously undertaken by the Secretary of State for Wales. These include the exercise of subordinate law-making powers under primary legislation which will continue to be made for Wales (either with England, or for the United Kingdom as a whole) at Westminster; control of an annual budget of around £7 billion; and oversight of a range of public bodies and agencies with responsibilities in Wales.

Articles 2 (2) and 26 - Non-discrimination

18. This section of the periodic report contains information about articles 2(2) and 26 of the Covenant. Discrimination against women is discussed under Article 3, and representation of women and of ethnic minorities in public life is covered under Article 25.

Racial discrimination

Government Action to Tackle Racial Discrimination

19. Ethnic minority communities are an integral part of British society. Almost half of the country's ethnic minority population was born in the UK and 75 per cent are British citizens. The Government greatly values the contribution that they make to the country – economically, socially and culturally.

20. The UK Government unreservedly condemns racial discrimination. It is firmly committed to the elimination of all forms of racism and to the development of policies which address racial discrimination, intolerance and violence. It seeks a society in which every individual is able to fulfil his or her potential through the enjoyment of equal rights, opportunities and responsibilities. The Government believes that ethnic diversity should be valued and that racial discrimination is incompatible with a decent and inclusive society and must be tackled vigorously.

UN Convention for the Elimination of All Forms of Racial Discrimination

21. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which took effect in the UK in 1969, contains a range of obligations on States Parties to prohibit and prevent racial discrimination. The UK was last subject to examination, on its 14th Report, in March 1997, when the Committee congratulated the UK on its openness, transparency and willingness to engage in dialogue. The UK's 15th Report has recently been submitted to the Committee.

Council of Europe Framework Convention for the Protection of National Minorities

22. The UK ratified the Framework Convention for the Protection of National Minorities in January 1998. Under the Convention, signatories guarantee persons belonging to national minorities equality before the law and freedom from discrimination. States Parties also agree to adopt, where necessary, measures to promote, in all areas of economic, social, political and cultural life, full and effective equality between minority and majority groups. The UK Government has recently reported on compliance with the Convention.

Race Relations Act 1976

23. The Race Relations Act 1976, which applies to Great Britain, has set the tone for race relations in the United Kingdom for the last twenty years. Under this Act, racial discrimination is unlawful in employment; in education, training and related matters; in the provision of goods, facilities, services and premises; and in the disposal and management of premises. The Act gives individuals a right of direct access to the Civil Courts and Employment Tribunals for legal remedies for unlawful discrimination.

24. In February 1999, the Government announced its intention to extend the provisions of the Race Relations Act, as soon as Parliamentary time permits. In future it will be unlawful for public authorities to discriminate on racial grounds in the exercise of any of their functions (see paragraph 27 below).

Commission for Racial Equality (CRE)

25. The Race Relations Act also established the Commission for Racial Equality (CRE). The CRE is independent of Government, but the Government fully supports its work and provides it

with funds of about £15 million a year. The CRE's statutory functions under the Race Relations Act 1976 are to:

- Work towards the elimination of racial discrimination;
- Promote equality of opportunity, and good race relations, between persons of different racial groups generally; and
- Keep under review the working of the Race Relations Act 1976 and to draw up and submit to the Secretary of State proposals for amending it.

26. The Commission also:

- Legally assists complainants in cases of discrimination;
- Tackles institutional discrimination by encouraging public and private sector leaders to commit themselves publicly to using their power and influence to end racial discrimination;
- Raises public awareness of the problems of racism and the advantages of multiculturalism, through public education programmes and advertising campaigns; and
- Works in partnership with local anti-racist groups, many of whom receive partial funding from the CRE.

27. The CRE published its third review of the Race Relations Act in June 1998. It contains proposals for extending the Act to the public sector; proofing legislation to prevent conflict with the Race Relations Act; developing positive action provisions; requiring business to monitor staff by ethnicity; and increasing the powers of the CRE and Employment Tribunals. The Home Secretary has carried out a consultation on the review to seek the views of those who would be affected by any change. The Government is currently looking at the proposals and the responses. (The Government has already announced its intention to extend the scope of the Race Relations Act to cover the public sector (see paragraph 24).

28. In 1998, the CRE received 1,657 applications for assistance, of which 1,098 were employment related, 479 arose in other areas and 80 were outside the scope of the Race Relations Act. The CRE offered advice and assistance to 972 applicants. Full legal representation was granted in 163 cases and 101 applicants received limited representation. 92 cases were referred to other organisations for representation, including 53 to trade unions, 15 to racial equality councils and one to a complainant aid body. In 1998, 164 cases were concluded by the CRE's litigation unit, of which 29 were successful, 33 dismissed following a hearing and 87 settled. In addition, the CRE settled 103 cases at an early, pre-litigation stage for the substantial sum of £624,527.

29. The CRE has collaborated in a number of high-profile and award-winning campaigns to promote racial tolerance and cultural diversity. Examples include:

- The "Lets Kick Racism out of Football" campaign, which has been running successfully for over four years and continues to gain support. A similar campaign was launched in 1997 in partnership with the Rugby Football League;

- The "Roots for the Future" campaign, a travelling exhibition celebrating ethnic diversity in Britain and the valuable contribution which has been made by immigrant communities and individuals to British society. In 1997 it travelled to nine UK cities and to the Hague and attracted nearly half a million visitors;
- The "Visible Women" campaign which was launched in 1997 to raise awareness of the obstacles facing ethnic minority women, particularly in the labour market; and
- Business in the Community's "Race for Opportunity", a national campaign aimed at improving equal opportunities in employment; supporting ethnic minority businesses; meeting the needs of ethnic minority customers; and assisting local community organisation. Many major British companies have joined the initiative which has the full backing of the Government.

Further details are included in the CRE's Annual Report for 1998 (Appendix 7).

30. The CRE has also launched a widespread public education campaign to encourage the public to challenge racism and negative racial stereotypes.

Employment Tribunals

31. Employment Tribunals deal with complaints of discrimination in employment. In 1997-1998, 2,568 complaints of race discrimination were registered within the Tribunals in England, Scotland and Wales. (Applications are counted according to nature of the main complaint at the time the case is registered, e.g. an application for unfair dismissal because of race discrimination may be registered as unfair dismissal and race discrimination but not be counted in the figures above.) Of these complaints, 655 were settled through the Advisory Conciliation and Arbitration Service, 709 were withdrawn or privately settled and 88 were successful following a hearing. 398 applications were unsuccessful following a hearing and 99 were dismissed at a hearing because they were not within the jurisdiction of a Tribunal. 135 Cases were disposed of by other means. A further 484 applications were live. Examples of cases are given in the CRE's Annual Report for 1998.

Race Relations Forum

32. The Home Secretary has created a Race Relations Forum to advise him on issues affecting ethnic minority communities. Membership is drawn from a broad spectrum of ethnic minority communities and brings together a wealth of experience and expertise. The Forum is making a positive and practical contribution to policy development in a range of areas and gives minority communities a new and effective voice at the heart of Government.

Crime and Disorder Act 1998

33. The Crime and Disorder Act 1998 introduced new offences of racially aggravated violence, harassment and criminal damage. They came into force in September 1998 and correspond to existing offences that deal with violence against the person, criminal damage and offences of harassment. They include a test that there was either racial motivation or evidence of racial hostility in connection with the offence, and provide the courts with higher maximum penalties to reflect the racial aspect to the crime (see also paragraph 493).

34. The Act sends out a strong message that racial violence and harassment is unacceptable and will be dealt with very seriously by the police and the courts. It also ensures that a higher priority

is given to the identification of the racial element of the crime in the gathering of evidence, thus preventing the racial aspect from being overlooked in sentencing.

35. The Stephen Lawrence Inquiry Report recommended that consideration should be given to allowing prosecution of offences involving racist language or behaviour (or possession of offensive weapons), where such conduct has taken place otherwise than in private. The Government is considering this recommendation, and the question whether existing police powers are being used effectively. It will also be considering improvements to the guidance given to the police and criminal justice system with a view to publishing revised guidance by the end of 1999.

Discrimination within the Criminal Justice System

36. Section 95 of the Criminal Justice Act 1991 requires the Government to publish such information as it considers expedient to help those involved in the criminal justice system to avoid discriminating against people on grounds of race, gender or any other improper grounds. The Home Office has published a series of documents in 1992, 1994, 1995 and 1997 on the issue of race and the criminal justice system under section 95. These documents contained information on the representation of ethnic minorities as suspects, offenders and victims in the criminal justice system and on employees within the criminal justice agencies.

37. The Fourth Periodic Report stated the Government's commitment to extend ethnic monitoring to all stages of the criminal justice system. Since that report the Government has:

- Introduced mandatory ethnic monitoring of stops and searches, arrests, cautions and homicides in all police force areas from April 1996;

- Published (in 1997) a major Home Office research project in three police force areas which identifies more clearly the difficulties of collecting and interpreting these data;

- Set up a series of joint seminars (in 1996-1997) between the Association of Chief Police Officers, the Home Office and HM Inspector of Constabulary, to train police in the collation, interpretation and use of the data;

- Extended (from 1997) ethnic monitoring to include deaths in police custody;

- Decided that (1999-2000) the ethnic breakdowns of notifiable arrests will be further broken down by gender, age and type of offence alleged;

- Provided specifications for the new IT systems for the Crown Court and magistrates' courts, which will enable ethnic monitoring throughout the judicial process, with feasibility projects being conducted in 1998-1999;

- Provided specifications for the new Crown Prosecution Service IT system, which will allow for comprehensive ethnic monitoring of all casework decisions; and

- Undertaken or commissioned research, including consideration of issues of ethnicity in the criminal justice system, patterns of offending between different ethnic groups, patterns of ethnic minority victimisation, and the operation of the criminal justice system in relation to ethnic minorities as suspects, offenders and victims of crime.

Stephen Lawrence Inquiry

38. On 31 July 1997 the Home Secretary announced an inquiry into the murder of Stephen Lawrence in April 1993. The terms of reference were:

> *To inquire into the matters arising from the death of Stephen Lawrence on 22 April to date, in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes.*

The report was published on 24 February 1999 and made 70 recommendations (Appendix 8). On 23 March, the Home Secretary published an action plan (Appendix 9) detailing how the Government intended to take forward the recommendations. The Home Secretary will personally oversee their implementation and will be chairing a steering group to assist him. The action plan is a framework for change, but it will need much work from many people to fill in the details and make change a reality.

39. Most of the recommendations are directed to the police service and deal with the definition, reporting, recording, investigation and prosecution of racist incidents and crimes; on family liaison and victims and witnesses; and on the training of police officers in racism awareness and first aid; but some go broader and suggest, for example, how the education system could help prevent racist incidents.

40. In Scotland, Ministers have made clear the intention to implement he recommendations of the inquiry insofar as they are relevant to Scotland and have undertaken to bring forward an action plan to fulfil this commitment as soon as practicable. Northern Ireland Ministers have given a similar undertaking.

Discrimination within the police force

41. Since December 1998 the Home Office has published all the statistical information collected through ethnic monitoring of the criminal justice system in an annual report *Statistics on Race and the Criminal Justice System*. The first of these (Appendix 10) and was made available to criminal justice practitioners and the general public. These reports confirmed previously published findings, and found that black people were, on average, five times more likely to be stopped and searched by the police, and were more likely to be arrested and less likely to be cautioned than were white people. These powers are being used against ethnic minority people more than their numbers in the population would warrant, and discrimination is likely to be a factor.

42. The Government believes that stop and search powers are important for the prevention and detection of crime, but it is committed to tackling the discriminatory use of the powers. The report on the Stephen Lawrence Inquiry made four recommendations about these powers and their use will be assessed through pilot projects. The report recommended that police officers should record all "stops" and "stops and searches" including non-statutory or "voluntary" stops, and that a record be given to the person stopped. The Home Office has commissioned research to gather information on current practices within forces in this area to test the practical implications of the inquiry's recommendations. The Metropolitan Police have set up pilot projects in five areas to help develop strategies to manage the use of stop and search fairly and effectively.

43. Police forces are being encouraged to identify areas in which they need to take action. The Association of Chief Police Officers has set up a project to develop effective use of these data, which will inform further guidance in this area. The revised Code of Practice – issued under the Police and Criminal Evidence Act 1984 and which came into effect on 1 March 1999 – emphasise

the importance of supervising officers responding to any evidence that stop and search powers are being used in a discriminatory way (Appendix 11).

Community relations

44. The inter-departmental Racial Attacks Group has now been replaced by the Racists Incidents Standing Committee (RISC) (see paragraph 30 of the Fourth Periodic Report). RISC focuses on four key areas:

- Dealing with the perpetrators of racially motivated crime;
- The reporting and recording of racially motivated crime;
- The operation of multi-agency panels; and
- Services to people experiencing racial harassment.

45. A guide on tackling racist incidents through multi-agency working *In This Together* has been produced at the request of RISC and has been widely circulated (Appendix 12).

46. Her Majesty's Inspectorate of Constabulary (HMIC) carried out a thematic inspection of Police Community and Race Relations. The report, *Winning the Race*, was published in 1997 (Appendix 13). The Government welcomed the report and fully supported its conclusions and recommendations. The report found that although much work had been done by police forces in this area, performance was patchy and further steps needed to be taken to ensure that racism and discrimination were eliminated. A report on a follow-up inspection of fifteen forces (Appendix 14) was published in March 1999. It highlights many instances of good practice, but also noted that a number of forces had failed to take account of the recommendations of *Winning the Race*. Even where progress had been made, the work had generally not been given the corporate direction necessary to ensure force-wide application of good local initiatives. The report recommended a service-wide strategy for community and race relations to define key components and common minimum delivery standards; and that forces should develop performance indicators based on community satisfaction rates to identify gaps in the quality of their service delivery. The report asked forces to re-examine the recommendations as a matter of urgency.

47. The Government welcomes the close working relationship that has been established between the Home Office and the National Black Police Association. The Association has been involved in the follow-up work to *Winning the Race* and will be involved in routine inspections by HMIC. It is also represented on a working group on the recruitment, retention and development of minority ethnic officers.

48. The number of racist incidents recorded by the police increased from 5,044 in 1989 to 13,878 in 1997-1998. Incidents have been recorded as "racist" if they fit the following definition drawn up by the Association of Chief Police Officers (ACPO):

> *Any incident in which it appears to the reporting or investigating officer that the complaint involves an element of racial motivation, or any incident which includes an allegation of racial motivation made by any person.*

The Stephen Lawrence report recommended a new definition of a racist incident which the Home Office will ensure is universally adopted by the police, local government and other relevant agencies. That definition is:

> *A racist incident is any incident which is perceived to be racist by the victim or any other person.*

49. The 1996 British Crime Survey showed that a significant number of racial incidents are not reported to the police, or, if they are, are not recorded by the police, or are otherwise not picked up by the police. The Government welcomes this and hopes it will influence both public confidence and further increase the proportion of racist crimes which are reported. The police and the Crown Prosecution Service are increasingly working together to improve the standards of reporting and recording of racist incidents.

Discrimination within the Prison Service

50. The Prison Service in England and Wales is committed to equality of opportunity and the elimination of discrimination on improper grounds. To ensure these values are adhered to the Prison Service has well developed race relations policies. The Prison Service race relations policy statement precludes discrimination and inequality of opportunity or provision on the grounds of colour, race, nationality, national or ethnic origins or religion It is displayed prominently in all establishments and headquarters.

51. Prison Service policies and procedures are continually examined and updated. A new Prison Service Order on Race Relations was issued in 1997 (Appendix 15). It was designed to improve race relations practices and introduced a number of new measures to stimulate innovation at a local level and encourage establishments to share good practice. New arrangements included measurable standards, which have provided a viable means of measuring performance and achievement.

52. The Prison Service seeks to ensure that all staff and prisoners know, understand and accept their professional and personal responsibilities to eliminate discrimination on improper grounds and to promote racial equality. All new-entrant prison officers receive race relations training and courses are provided for Race Relations Officers and Management Teams, alongside training for all establishment staff.

53. In May 1998 the Prison Service committed itself to a programme of work to reduce gaps between policy and practice. This programme includes action to boost recruitment of prison staff from ethnic minority groups, targets for representation of ethnic minority groups at all levels within the Prison Service, and action to ensure that there is no discrimination in appraisal and selection procedures. For prisoners this programme includes making more available products appropriate for prisoners from ethnic minority groups like special shampoos, skin conditioners etc., strengthening the leadership of Race Relations Management Teams, improved links with the community and literature translated into minority languages.

54. Race relations issues are addressed during the initial training of prison officers in Scotland. A training pack, which includes a video, *Race for the Future*, is available in each establishment.

Racial discrimination in employment

55. The Labour Force Survey (Appendix 16) showed that in 1997 there were 2.4 million ethnic minority adults in the population, 2.2 million of whom were of working age (6.4 per cent of the total working population).

56. The following is a breakdown of the ethnic minority working-age population by main ethnic groups:

Black Caribbean	340,000
Black African	230,000
Indian	610,000
Pakistani	350,000
Bangladeshi	110,000
Chinese	120,000

57. The unemployment rate for Black African men was 25 per cent, compared with 7 per cent for White men. Black African and Pakistani or Bangladeshi women had unemployment rates of 24 per cent and 23 per cent respectively), much higher than the 5.5 per cent of White women.

58. Between ethnic groups, economic activity rates for women vary widely. Working-age Black Caribbean and White women had activity rates of around three-quarters, compared with less than one-third for Pakistani or Bangladeshi women.

59. *Race for the Future* is a Government initiative promoting the message to employers that racial diversity in the workplace is essential for good business practice, and that in today's Britain, ethnic minority people play an increasingly important role in helping businesses compete and prosper. There have been regional conferences in Birmingham and Manchester, aimed at local business leaders making the case for equality of opportunity and the value of diversity in the workplace. Other events are targeting specific business sectors.

60. The Department for Education and Employment has established a Race Employment and Education Forum (REEF). The Forum's remit is to:

> *consider and advise on matters relating to progress of ethnic minorities in the labour market including the interface between employment and education, and employment and training.*

Membership has been widely drawn from industry, education, trade unions, voluntary bodies and the CRE.

Social Exclusion

61. Tackling social exclusion is a priority for the Government. Education and training are at the heart of this. The Government is developing and delivering policies to help all those currently excluded or disaffected to realise their potential and take their rightful place in society. There is a Social Exclusion Unit based in the Cabinet Office, which reports direct to the Prime Minister. Its report, *Bringing Britain Together: A National Strategy for Neighbourhood Renewal*, proposes action to improve deprived neighbourhoods. It emphasised that, while much had been achieved in the past, present problems were partly due to the fact that too much account had been taken of the physical environment at the expense of personal and social needs.

62. In the recently announced "New Deal for Communities", potential Pathfinder partnerships will be required to demonstrate that they have taken into account the views of the local communities, including minority ethnic communities, and will continue to involve them throughout the life of the projects. They will also need to demonstrate that they have the capacity to "work with and involve ethnic minority and minority groups".

63. The Government is very concerned about the over-representation of ethnic minority pupils, particularly boys of black Caribbean origin, among those excluded from school. It is:

- Increasing the amount of exclusions data published by ethnicity,

- Developing proposals for measures, including community monitoring, to support ethnic minority pupils at risk of exclusion; and

- Preparing clearer advice to head teachers, governors and LEAs on the use of exclusion, which illustrates good practice with special reference to exclusion of pupils of Black-Caribbean origin. Consultation on the draft guidance, entitled *Social Inclusion: Pupil Support*, closed on 31 March. A final version was circulated to all schools at the end of July.

64. The draft guidance, to which head teachers, governors and LEA officers must have regard from September 1999, also encourages those who hear exclusions appeals to allow those pupils, whose parents request it, to attend the hearing and address the panel.

Race relations in the armed forces

65. The Armed Forces have, in the past, attracted criticism about their treatment of ethnic minorities. In 1998 they entered into a five-year Partnership Agreement with the Commission for Racial Equality to promote racial equality and the elimination of all forms of racial discrimination and harassment within the Armed Forces. This agreement reflected the considerable improvements made in Service policies and practices since 1996, following publication of the Commission's report of a formal investigation into racial discrimination in the Household Cavalry.

66. The Armed Forces Act 1996 amended the provision of the Service Acts, which govern the procedure for internal redress of complaint. Since October 1997 Service personnel have had the right to submit complaints to employment tribunals under the Sex Discrimination Act 1975 and the Race Relations Act 1976.

Race relations in Scotland

67. Scotland, like the rest of the United Kingdom, benefits from being a multicultural society. The Scottish Parliament (see paragraph 15) represents all Scottish communities, including those which are black and ethnic minority. Race relations legislation is reserved to the Westminster parliament but the Scottish parliament, which formally assumed its powers on 1 July 1999, will have a strong interest in non-discrimination in the delivery of devolved services. The Parliament and Scottish Executive are well placed to promote and encourage equal opportunities and Scottish Ministers have made clear that the promotion of equality and tackling discrimination are priorities.

Race relations in Wales

68. The equal opportunity provisions in the Government of Wales Act 1998 oblige the National Assembly for Wales to ensure equal opportunity in the conduct of its business and in the exercise of its functions, including the need to report on the arrangements to meet the Assembly's obligations and an assessment of the effectiveness of those arrangements in promoting equality of opportunity.

69. In 1998, the Welsh Office, the Welsh Local Government Association, the Commission for Racial Equality and local race equality bodies formed a partnership to organise events and activities marking the European Year against Racism.

Race Relations in Northern Ireland

70. The Race Relations (Northern Ireland) Order 1997 introduces legislation on race relations in Northern Ireland along the lines of the Race Relations Act 1976 (which applies only to Great Britain). It came into operation on 4 August 1997 (Appendix 17).

71. The Order makes racial discrimination unlawful in employment, training and related matters, in education, in the provision of goods, facilities and services, and in the disposal and management of premises. Individuals have a right of direct access to the courts and industrial tribunals for legal remedies for unlawful discrimination.

72. The Order also established a Commission for Racial Equality for Northern Ireland to help enforce the legislation and to promote equality of opportunity and good relations between people of different racial groups. The Commission is a principal source of information and advice to the public about the legislation and has discretion to assist individuals who consider they have been discriminated against.

73. It is estimated that between 9,000 and 12,000 people in Northern Ireland (less than 1 per cent of the population) belong to an ethnic minority group.

Religious discrimination

Northern Ireland

74. The Northern Ireland Fair Employment Acts of 1976 and 1989 proscribe discrimination on grounds of religious belief of political opinion. Since January 1990 considerable progress has been made in tackling religious discrimination in Northern Ireland, through implementation of the 1989 Act and changing of attitudes to promotion of equality of opportunity in employment. All public sector organisations, and private sector employers with more than 10 employees, are required to submit annual workforce returns to the Fair Employment Commission. More than 100 public sector employers and almost 4,000 private sector concerns, are registered with the Commission.

75. The Commission retains powers granted under the 1976 Fair Employment Act, to investigate any employer at any time and, on the basis of monitoring returns, it has been able to examine more closely those firms which appear to have serious imbalances in the workforce. The Commission's aim in these cases is to obtain agreements to voluntary undertakings to take affirmative action to rectify imbalances.

76. The principal function of the Fair Employment Tribunal is to adjudicate complaints of alleged discrimination. It now can award unlimited compensation to victims of unlawful discrimination. It can enforce undertakings described above. Its decisions have helped increase awareness of the importance of equality of opportunity in employment. The table below sets out details of the complaints of alleged discrimination received by the Tribunal as at 31 December 1998.

Fair Employment Tribunal
Registration, Promulgations* and Live Cases (31 December 1998)

	1993	1994	1995	1996	1997	1998	TOTAL
Allowed after full hearing	8	4	4	5	0	0	**59**
Dismissed after preliminary hearing	10	15	18	24	10	0	**83**
Dismissed after full hearing	17	27	32	22	0	0	**188**
Dismissed/Struck out for want of prosecution	4	6	6	18	9	0	**51**
Withdrawn	188	244	237	272	231	80	**1,667**
Conciliated by Labour Relations Agency	12	20	23	46	19	6	**155**
Settled between the parties	78	73	62	42	5	2	**383**
Settled between the parties – terms attached	4	0	0	0	0	0	**12**
Stayed	0	0	2	1	0	0	**10**
Live cases	4	4	26	136	392	471	**1,033**
Total Registration	**325**	**393**	**410**	**566**	**666**	**559**	**3,641**

* Tribunal's written decision issued to the parties.

77. The Commission publishes annual analyses which show that between 1990 and 1998, the proportion of Roman Catholics in monitored employment increased from 34.9 per cent to 39.1 per cent. (Roman Catholics make up approximately 40 per cent of the economically active population.)

78. The Government made a commitment to review the Fair Employment (Northern Ireland) Act 1989 and all other matters relating to fair employment after five years. This review was undertaken by the Standing Advisory Commission on Human Rights (SACHR), an independent body which advises the Secretary of State for Northern Ireland on fair employment legislation and other human rights issues. It was a wide-ranging exercise involving extensive research and consultation with all interested parties and individuals. SACHR's report *Employment Equality Building for the Future* (Appendix 18) was published on 26 June 1997. It found that the 1989 legislation had had a positive impact on equality in employment, but it made over 160 recommendations to Government for its policies on unemployment and fair employment, and proposed changes to policies and procedures in education, training and Government initiatives on targeting social need and policy appraisal and fair treatment.

79. In the light of SACHR's report, the Government published a White Paper, *Partnership for Equality* (Appendix 19), which set out plans for enhancing equality in Northern Ireland.

On 10 July 1998, following a consultation period, the Government announced that it would proceed with a statutory equality obligation on public bodies (including, where appropriate, UK Departments operating in Northern Ireland, and District Councils). This would ensure that all functions of public bodies are carried out with due regard to the need to promote equality of opportunity between groups covered by the former PAFT (Policy Appraisal and Fair Treatment) guidelines. In addition public authorities are required to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinions or racial groups. An Equality Commission, incorporating the responsibilities of the Fair Employment Commission, Equal Opportunities Commission for Northern Ireland, Commission for Racial Equality for Northern Ireland and Northern Ireland Disability Council, will oversee this statutory duty. Provisions are contained in the Northern Ireland Act 1998.

80. Parliament approved the Fair Employment and Treatment (Northern Ireland) Order (Appendix 20) in December 1998. The Order:

- Extends legislation to cover the provision of goods, facilities, services and the disposal and management of premises (including land);
- Broadens monitoring to include part-time workers and leavers;
- Gives additional roles to the Fair Employment Commission (to become part of the Equality Commission) for example to advise Government on measures to reduce the imbalance between the unemployment rates of Protestants and Roman Catholics;
- Provides a right of appeal against national security certificates (which will be exercisable when a Tribunal is established under section 91 of the Northern Ireland Act 1998);
- Allows employers and providers of training to engage in religion specific training;
- Provides protection for employers recruiting solely from the unemployed;
- Extends legislation to cover barristers and partnerships of six or more; and
- Allows for compensation for unintentional indirect discrimination.

Great Britain

81. Individuals are protected under the Race Relations Act 1976 if it can be shown that they have suffered on racial grounds. It is for the courts to decide whether a group constitutes a racial group for the purposes of the Act and the Public Order Act 1986. While the courts have not developed much case-law under the Public Order Act, a number of cases have arisen in the civil law under the Race Relations Act. This development shows that the Courts treat Jews and Sikhs, but not, for example, Muslims, Christians or Buddhists, as a racial group. The caselaw may continue to develop.

82. There is, therefore, no specific legislation covering religious discrimination in Great Britain, although there is in Northern Ireland (see paragraphs 74-80 above). There is some pressure for action in this area, particularly from Muslim groups. The Government has decided to commission research into the nature and extent of religious discrimination. The project should take about 18 months and will help to inform its thinking in this area.

83. The Government published a White Paper in February 1999 on proposals for the next Census in 2001. Those proposals include a question on religion as well as expanding the ethnic origin question. It is proposed to include, for the first time, an ethnic group question in the Northern Ireland 2001 Census.

Disability discrimination

84. Since the Fourth Periodic Report The UK introduced the Disability Discrimination Act (DDA) in 1995 (Appendix 21). The DDA affords protection to disabled people in many areas including employment, access to goods, facilities and services and the management, buying or renting of land or property. In addition the DDA requires schools, colleges and universities to provide information for disabled people; allows the Government to set minimum standards to assist disabled people to use public transport; and sets up a disability council for Great Britain and one for Northern Ireland to advise the Government on eliminating discrimination against disabled people.

85. The DDA defines a disabled person as someone with a physical or mental impairment which has a substantial and long term adverse affect on their ability to carry out normal day-to-day activities. People who have had a disability in the past are also covered.

86. Since December 1996, it has been unlawful for an employer with 20 or more employees (15 or more employees from 1 December 1998) to discriminate against current or prospective employees with disabilities. The DDA also places a duty on employers to make reasonable adjustments to remove or reduce any substantial disadvantage caused to a disabled employee by a physical feature of their premises or their employment arrangements.

87. Service providers have a duty not to discriminate against disabled people. They should not refuse a service; provide a worse standard of service, or offer a service on worse terms. Similar duties apply to those selling or letting premises. From October 1999, service providers will have to take reasonable steps to change any practice, policy or procedure which makes it impossible or unreasonably difficult for disabled people to use a service; provide an auxiliary aid or service which would enable disabled people to use a service; and help disabled people overcome physical barriers which make it impossible or unreasonably difficult for them by providing the service by a reasonable alternative method. From 2004, service providers will also have to consider tackling physical barriers by removing them, altering them, or providing a reasonable means of avoiding them.

88. The Disability Discrimination Act 1995 is not comprehensive or enforceable. The Government therefore established a Disability Rights Task Force (DRTF) in December 1997 to consider how best to secure comprehensive, enforceable civil rights for the 8.5 million disabled people in Britain, and to make recommendations on the role and functions of a Disability Rights Commission (DRC) to help them enforce their rights.

89. The DRTF presented unanimous recommendations on a Disability Rights Commission, which formed the basis of the White Paper *Promoting disabled people's rights: Creating a Disability Rights Commission fit for the 21st Century*, which was published on 21 July 1998 (Appendix 22).

90. The Disability Rights Commission Bill is currently before the UK Parliament. The DRC will work with employers and service providers to eliminate discrimination; promote the equality of opportunities for disabled people; and keep under review the working of the Disability Discrimination Act 1995 and the Disability Rights Commission Bill when it becomes an Act. In

Northern Ireland it is proposed that the Equality Commission, to be established under the Northern Ireland Act 1998, will have a similar role in relation to disability rights as the Disability Rights Commission.

Children with Special Educational Needs

91. The Government is committed to the introduction of an increasingly inclusive education system and has already made considerable funding available for this purpose. Under the Schools Access Initiative, £20 million is to be made available in 1999-2000 to enable mainstream schools to increase their capacity to take pupils with SEN. A further £8 million is available through the Standards Funding Programme for projects to promote inclusion and develop links between mainstream and special schools and to support provision for children with emotional and behavioural difficulties.

92. Government policy is to ensure that whenever possible children have the opportunity to be educated in mainstream schools, where that is their wish and the wish of their parents. At the same time there are some children with special educational needs for whom specialist provision may be appropriate, for some of their school life. There are children and parents who would choose a special rather than a mainstream placement.

93. The Government is therefore adopting a practical approach which puts the needs of the child first. The aim is to provide a responsive and inclusive educational system which offers high quality support, providing opportunities for all children with special educational needs to achieve their full potential.

Article 3 – Sex equality

Minister for Women and new Women's Unit

94. There is now new machinery to address women's issues through a Minister for Women in the Cabinet, supported by the Women's Unit in the Cabinet Office. The Women's Unit works across Government, contributing the women's perspective to the wider government agenda. Its aim is to listen to women's concerns, to reflect their concerns and promote their interests within government, and in turn to communicate effectively what the government is doing to meet those concerns. It thus ensures that women's interests and rights are considered in the preparation and implementation of policy. Ministers with special responsibilities for women's issues and equal opportunities have also been appointed for Scotland, Wales and Northern Ireland.

CEDAW

95. The UK's Third Periodic Report on the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) was submitted in July 1995. The UK's Fourth Periodic Report was submitted in January 1999. The UK Government was examined on both reports in June 1999.

Equal Opportunities Commission: Great Britain (EOC)

96. The Equal Opportunities Commission for Great Britain (EOC) has a statutory duty to carry out a periodic review of the sex discrimination legislation and to advise the Government of any changes it considers necessary. The Government recently announced its response to several

recommendations of the EOC. It made clear that it was not persuaded that the legislation needed a major overhaul, but that it would:

- Consult on changes in the way equal pay cases are dealt with to make them clearer and simpler;
- Update the law to take account of developments in Europe on equal treatment;
- Bring the functions of all public authorities within the scope of the Sex Discrimination Act;
- Ensure that all public bodies promote equal opportunities and explore the legislative and non-legislative options for doing so;
- Help employers and service-providers, especially in small companies, meet their obligations under the current law;
- Bring the EOC's powers in line with those of the Disability Rights Commission; and
- Encourage joint working between all the equality commissions.

97. The EOC's Code of Practice on Equal Pay came into effect in March 1997 (Appendix 23). The Code provides practical guidance and recommends good practice to those with responsibility for or interest in the pay arrangements within a particular organisation. It is based on the considerations that a right to equality of pay is conferred under domestic and European legislation. It offers employers and employees a step by step guide on how to detect and remedy pay discrepancies between the sexes.

98. The work of the EOC is described in paragraphs 59 to 62 of the Fourth Periodic Report. The EOC provides advice informally, and has powers under section 75 of the Sex Discrimination Act 1975 to grant assistance, including full legal support, to individuals in cases of alleged discrimination under the 1975 Act or the Equal Pay Act 1970. In 1997, 228 requests for legal advice or assistance were received by the Commission, of which 57 were granted for legal assistance and 17 for legal advice.

Equal Opportunities Commission: Northern Ireland (EOCNI)

99. In 1997-1998 the Equal Opportunities Commission for Northern Ireland (EOCNI) received 1,891 legal enquiries and complaints. 214 requests were made for assistance under Article 75, of which 100 were granted. During the year 14 cases were concluded in the industrial tribunal; 12 were decided for the applicant and two for the respondent; 67 further cases were settled.

100. In 1997, the EOCNI recommended to the Government changes to the Sex Discrimination Order. The main recommendations were:

- Bringing together of the sex discrimination and equal pay legislation;
- Broadening of the scope of what constitutes discrimination;
- Fewer exceptions to the law;

- Writing into domestic law of rights stemming from European Community law;
- An obligation, in certain circumstances, on employers to take positive action to promote equal opportunities;
- Adequate penalties for not complying with the law;
- A system of contract compliance; and
- Strengthened powers to investigate possible discrimination.

101. The EOCNI published a Code of Practice on recruitment and selection in 1995 (Appendix 24) and one on equal pay in 1999 (Appendix 25). In 1997, the EOCNI launched a website. Among a wide range of advice publications and research reports, it published model policy statements on harassment and on equal opportunities, jointly with the Fair Employment Commission and the Commission on Racial Equality for Northern Ireland and in co-operation with Disability Action, a Northern Ireland non-governmental organisation.

102. Under section 73 of the Northern Ireland Act 1998, a new Equality Commission for Northern Ireland is to be established. The Commission will take over the functions of the EOCNI and will be responsible for policing equality of opportunity in all public authorities in Northern Ireland. A date for the establishment of the Commission has not yet been set.

Pregnant workers

103. Under the Employment Rights Act 1996, all pregnant workers have the right not to be unreasonably refused paid time off work for antenatal care. The dismissal of a woman because she is pregnant or for reasons connected with her pregnancy is automatically unfair. The same provisions apply in Northern Ireland under the Employment Rights (Northern Ireland) Order 1996. Paragraph 65 of the Fourth Periodic Report set out women's maternity rights.

104. The Employment Relations Bill, introduced in Parliament on 27 January 1999, contains provisions for new family-friendly rights. These include:

- The extension of maternity leave from 14 to 18 weeks;
- Three months parental leave for employees with one year's qualifying service;
- Rights to additional maternity absence after one year's service, instead of two years at present (in line with parental leave);
- Clarifying that contracts of employment continue during parental leave and extending maternity absence unless expressly terminated, thus ending current uncertainty;
- Providing a right for employees to return to their own jobs, or if necessary to suitable alternatives, after parental leave, so that parental leave is treated in the same way as additional maternity leave;
- Provision of three months' adoption leave;
- Right to reasonable time off for all employees to deal with an emergency;

- Protection against dismissal or detriment for exercising rights to parental leave or emergency time off;
- Simplification of notice arrangements for maternity leave, thus helping women and their employers and reducing scope for misunderstandings and disputes; and
- Provision of powers to implement the Part-Time Work Directive and ensure equal pay for part-time workers.

105. The rights to parental leave and emergency time off are due to be introduced by 15 December 1999. The Part Time Work Directive is due to be implemented by 7 April 2000. Implementation of equivalent legislation in Northern Ireland will be a matter for the Northern Ireland Assembly.

Women in the Armed Forces

106. The Armed Forces are committed to expanding career opportunities for women, except in units whose primary duty is "to close with and kill the enemy". That policy is being challenged in the European Court of Justice.

107. Women represent 7.7 per cent of the Armed Forces. On 1 December 1998 there were 16,227 women in the Armed Forces: 3,350 in the Naval Services, 7,755 in the Army and 5,122 in the Air Force. Currently 73 per cent of posts in the Naval Service, 70 per cent of posts in the Army and 96 per cent of posts in the RAF are open to women. Women are excluded from posts in the Infantry, Armoured Corps/Household Cavalry, Royal Marines Commandos and RAF Regiment (and see paragraph 630).

108. From 1 April 1998 the percentage of posts in the Army open to women increased from 47 per cent to 70 per cent. A review of the remaining posts currently closed to women on combat effectiveness grounds led to 1,300 posts in the Royal Marines being opened to women. Women cannot currently serve in submarines or as mine clearance divers for medical and/or practical reasons. These restrictions were reviewed in early 1999, but it was decided for the same reasons that they should remain.

109. All Servicewomen who become pregnant can choose whether to leave the Armed Forces or take a period of maternity leave and return to duty after the birth of a child. This followed a court case about the EC Equal Treatment Directive. As result of this, Servicewomen who were discharged on the grounds of pregnancy between August 1978 and August 1990 became eligible for compensation. More than 5,000 claims were received and the Government has paid over £58 million in compensation.

Homosexuals in the armed forces

110. The Government has already made clear that the issue of homosexuality in the Armed Forces will be reviewed during this Parliament and there will be a free vote in Parliament. There would be no need for any legislative change if the policy alters.

Transsexual people in the Armed Forces

111. Transsexual people are covered by sex equality legislation. Those who apply to join any of the Armed Forces must meet the same educational and physical fitness criteria as other applicants.

Domestic violence against women

112. Domestic violence is the largest single type of violence against women. Both men and women suffer domestic violence. But Government research has shown that women are more likely to experience it, to be repeat victims, to be injured, and to be frightened by threats.

113. In June 1999, the Government launched *Living with Fear: an integrated approach to tackling violence against women in England and Wales*. This is the first document produced by an UK government to address all forms of violence against women, including domestic violence, rape, sexual assault, violence at work and sexual harassment. The primary goal is that within five years there will be effective multi-agency partnerships across the country, drawing on the experience and good practice in this report. *Living with Fear* pulls together practical examples of good work from all over the country as a blueprint for the future and sets out a strategic framework for preventing the problem. The Government's approach is to prevent violence, bring perpetrators to justice and provide timely support and protection for women who have experienced violence.

114. In January 1999, the Government launched in England and Wales a new domestic violence publicity and awareness campaign under the title *Break the Chain* (Appendix 26). A separate campaign has been launched in Scotland. The campaign began with the issue of a new leaflet and posters to such places as libraries, local authority offices, hospitals and police stations. This stressed that domestic violence is not acceptable and need not be accepted, set out the help available, and advised others on what they could do to help. A new inter-departmental guidance booklet will be issued to the agencies responsible for dealing with domestic violence.

115. In its consideration of the Fourth Periodic Report, the Committee raised the issue of provocation as a defence to charges of assault. It is important that the law deals fairly and appropriately with those who kill, even if they have been provoked, and that justice is both done and seen to be done. The law does recognise that the circumstances in which killing takes place may excuse or mitigate the offence. Self-defence is a complete defence to a charge of murder, which if successful, results in the acquittal of the defendant. Provocation is a partial defence which reduces the offence from murder to manslaughter. Judgements in the cases of *Ahluwalia* and *Humphries* make it clear that a delayed response to provocation does not necessarily prevent the defence succeeding; and that the cumulative effect of prolonged abuse can be taken into account along with the impact of the final provoking incident. The other partial defence to murder, that of diminished responsibility, is also successfully pleaded in some domestic homicide cases. In such cases, the onus is on the prosecution to prove beyond all reasonable doubt the absence of, for example, provocation or self-defence on the part of the defendant.

116. The Government is attempting to improve statistics on domestic violence to enable a better understanding of its nature and extent, the amount of resources and the impact of measures devoted to addressing it. Guidance on new legislation and research results is being prepared for the police to help them tackle domestic violence. Domestic violence research already published by Government includes the results of an self-assessment survey on experiences and reports on projects investigating police organisational structures, a repeat victimisation approach by the police in their response to reported incidents, and the provision of a civilian crisis intervention service to follow up police responses. The Government is conducting a survey of service provision for those fleeing domestic violence and reviewing funding arrangements for all forms of supported accommodation.

117. The Government's Crime Reduction Programme, a major initiative to reduce crime by focusing on what is works and what is cost-effective includes a £6 million component specifically

for violence against women. In the first stage, researchers have been invited to review what is known about aspects of domestic violence and the effectiveness of different interventions. The findings will be used to assist the selection of projects for evaluation and the mainstreaming of good practice, to start in early 2000.

118. The Committee was concerned, in its examination of the Fourth report, to ensure that laws that protect women from violence were fully enforced. The UK Government fully shares this objective, and a significant amount of legislation has been enacted since the Fourth Periodic Report:

- Part IV of the Family Law Act, which came into force on 1 October 1997, gives more protection from domestic violence through the civil law and makes available molestation orders and occupation orders with greater powers of arrest when violence is used or threatened, and enables removal of the abuser rather than the child in cases of suspected child abuse;

- In June 1997, the Government implemented the Protection from Harassment Act 1997 (Appendix 27). It introduced two new criminal offences: the first of pursuing a course of conduct which amounts to harassment of another and which the defendant knows or ought to know amounts to harassment of another; the second, more serious offence, of causing another to fear that violence will be used against him or her (aimed at the most serious cases where a person's behaviour is so threatening that victims fear for their safety) which carries a maximum sentence of five years' imprisonment. The Court also has the power to make a restraining order against a defendant convicted of either offence, a breach of which is punishable by up to five years imprisonment, a civil remedy is also available.

- The Crime and Disorder Act 1998 set up partnerships which are expected to devise a strategy for tackling domestic violence as part of a crime reduction strategy. The Act also introduced the Sex Offender Order (annex A of 1998 Act – Appendix 28). The police will be able to apply to the magistrates' courts for an order against a known sex offender who has behaved in such a way as to give reasonable cause to believe that it is necessary to protect the public from serious harm from him.

- The Family Homes and Domestic Violence (Northern Ireland) Order, implemented in Autumn 1998, is designed to take into account previous domestic violence when making residence or contact orders for children;

- The Sex Offenders Act 1997 established the sex offenders' register, which enables the police to monitor the whereabouts of known sex offenders.

Scotland

119. *Preventing Violence Against Women: A Scottish Office Action Plan* (Appendix 29) was published in November 1998 as a consultation document. It set out a plan of action which will be refined into a strategic document when responses are received. The consultation period ended on 28 February 1999.

120. A Scottish Partnership on Domestic Violence was established in November 1998. This group involves policy advisers in the Scottish Office and experts in the provision of services to victims, including the police, judiciary, Prison Service, Health Service, local authorities and victims' organisations. It is expected to recommend minimum and consistent levels of service

through Scotland for women suffering domestic violence, with special regard for the needs of women in rural areas, from ethnic minorities and with disabilities. The impact on children and young people will also be considered. The Partnership reported to Ministers on 29 March 1999 and its proposed workplan was issued as a consultation document on 9 April 1999 (Appendix 29). Comments have been requested by 30 June and will be considered by the new Scottish Administration. The continuation of the Partnership will be a matter for the Scottish Administration.

Other initiatives

121. Other initiatives to reduce violence against women include:

- The report of the Working Group on Vulnerable or Intimidated Witnesses, *Speaking up for Justice,* (Appendix 30), contains 78 recommendations aimed at improving the treatment of vulnerable or intimidated witnesses in the criminal justice system. These include the development of prompts to assist the police identify such witnesses, pre-trial support and preparation and special measures to assist such witnesses give their best evidence in court such as use of screens round the witness box to shield the witness from viewing the defendant, giving evidence by live TV link, a ban on unrepresented defendants from personally cross-examining the victim in cases of rape and sexual assault and a further restriction on the circumstances in which a victim of rape can be questioned about her previous sexual history. The report also contains a number of recommendations relating to child witnesses and these are mentioned under Article 24. The plan to implement all the report's recommendations should be in place by summer 1999.
  (Part II of the Youth Justice and Criminal Evidence Bill currently before Parliament gives effect to some 26 of these recommendations.)

- Funding of £150,000 per annum to Women's Aid; and

- Publication of papers by the Royal College of Midwives on female genital mutilation and domestic abuse in pregnancy.

122. On 16 June 1999, the Government introduced a concession which is outside the Immigration Rules, for overseas spouses who wish to remain in the United Kingdom but to leave their partner because of domestic violence. The spouse must produce objective evidence of domestic violence. An applicant whose marriage breaks down during the probationary year as a result of domestic violence may exceptionally be granted indefinite leave to remain, outside Immigration Rules, provided the violence occurred while the marriage was subsisting and the applicant is able to produce one of the following forms of evidence:

- An injunction, non-molestation order or other protection order (other than an ex parte or interim order);

- A relevant court conviction; or

- Full details of a relevant police caution.

123. The Government has decided that an applicant widowed during the probationary period may exceptionally be granted indefinite leave to remain outside the Immigration Rules, provided the Secretary of State is satisfied that the marriage was subsisting at the time the applicant was

widowed. These arrangements will also be applied to those who have been admitted to join a person settled here under the unmarried partners' concession.

Article 4 – Derogations

Derogation under Article 9(3)

124. The United Kingdom's derogation from article 9(3) of the Covenant with respect to Irish terrorism is necessary because the current arrangements are that the Secretary of State, rather than a judicial authority, is responsible for considering and, if appropriate, granting applications for extending the detention of terrorist suspects in police custody beyond 48 hours (up to a total of 7 days).

125. It has long been the Government's view that there should be a judicial element in the process. The consultation paper, *Legislation Against Terrorism* (Appendix 31), issued in December 1998, proposed a judicial Commission to consider extensions of detention. Responses to that consultation paper are being analyzed and the Government expects to bring forward legislation at a suitable opportunity. The mechanics and practicalities of such a Commission have yet to be worked up, but the Government has confirmed its intention to introduce measures to enable a withdrawal of its derogation under the Covenant (and the corresponding derogation under the European Convention on Human Rights).

126. Because there is still a security problem related to Irish terrorism, despite the Belfast Agreement, the Government believes it essential that the police have adequate powers to detain and to question those whom they have reason to believe may be involved in terrorism. It takes the view that the derogation must remain in place in the meantime, and does not believe it is appropriate for extensions of detention of terrorist suspects to be dealt with in the same way as other criminal suspects – that is, in a magistrate's court. The Secretary of State is able to take all relevant information into account when making a decision regarding extension, and is aware of the need to exercise his judgement with care and attention.

Article 5 – Interpretation

127. The UK Government has no comments on Article 5 to add to those in earlier Periodic Reports.

Article 6 – Right to life

Death penalty

128. The death penalty has been abolished in the United Kingdom for the remaining civilian offences of treason and piracy (by the Crime and Disorder Act 1998), and for offences under armed forces legislation (by the Human Rights Act 1998).

129. The UK accordingly signed the Sixth Protocol to the European Convention on Human Rights in January 1999. The Protocol was ratified in May 1999. The UK signed the Second Optional Protocol to the ICCPR on 31 March 1999, and will ratify it soon, without any declaration to preserve the use of the death penalty in wartime.

Abortion

130. In Great Britain, pregnancies may be terminated only under the provisions of the Abortion Act 1967, as amended by the Human Fertilisation and Embryology Act 1990, that is, if two registered medical practitioners are of the opinion, formed in good faith, that an abortion is justified within the terms of the Act. The grounds for abortion effective from 1 April 1991 are:

- That the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical and mental health of the pregnant woman or any existing children of her family; or
- That the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
- That the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or
- That there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

131. The Abortion Act 1967 does not apply to Northern Ireland where it is not legal to terminate a pregnancy, other than to save the life of the mother or to prevent serious damage to her physical or mental health.

Police use of firearms in Great Britain

132. The use of firearms by the police in Great Britain and the guidance and other safeguards that are in place were described in paragraphs 64 to 68 of the Third Periodic Report and paragraphs 90 to 94 of the Fourth Periodic Report.

England and Wales

133. The number of police officers in England and Wales trained and qualified to carry firearms has fallen from 6,769 at the time of the Fourth Periodic Report to 6,137 on 31 March 1998. Capacity is concentrated in a small number of highly trained officers and the continued use of armed response vehicles to deal with firearm incidents. The number of police firearms operations has fallen by more than 4 per cent from 12,379 in 1996-1997 to 11,842 in 1997-1998. Firearms were discharged by police officers in only three incidents in the year to March 1998, resulting in two deaths.

Scotland

134. The number of police officers in Scotland trained in the use of firearms and, therefore, authorised to use them is a matter for decision by Chief Constables and varies from force to force. On 31 March 1998 there were 689 police officers in Scotland trained and qualified to carry firearms compared with 723 at the end of March 1997. The number of police operations in Scotland where firearms were issued has risen from 270 in 1996-1997 to 292 in 1997-1998, an increase of over 8 per cent. However, firearms were discharged police officers in only one incident in Scotland in 1997-1998 compared with nine occasions in 1996-1997.

Police and military use of firearms in Northern Ireland

135. The police and armed forces in Northern Ireland continue to face the threat of terrorist attack: 302 police and 655 military personnel have been killed as a result of it in recent years. Members of the security forces regularly carry firearms. The last three deaths caused by the security forces in terrorist-related incidents were in November 1992.

136. Since 1983, 15 soldiers and police officers have been charged with murder, two with manslaughter and three with attempted murder in incidents involving the use of lethal force in the course of their duties. These charges have resulted in four murder, one attempted murder and one manslaughter conviction. There have been three acquittals for murder and one for manslaughter.

137. The use of plastic baton rounds has declined sharply in recent years: in 1998, 1,237 rounds were fired, mostly during widespread rioting involving danger to life.

Private possession of firearms

138. No one in the United Kingdom may own a firearm or shotgun unless his local chief officer of police is satisfied that he will not present a threat to public safety or to the peace. The owner of a firearm and, in Northern Ireland, a firearm or a shotgun, must satisfy the chief officer that he has a good reason for possessing the weapon for legitimate occupational or leisure purposes. (Shotguns are mainly used for sport but can be used for criminal purposes.) If the chief officer is so satisfied, he will issue a firearm or shotgun certificate under the Firearms Act 1968 (Great Britain) or the Firearms Order 1981 (Northern Ireland). The certificate binds the holder to take precautions to prevent access to the gun by unauthorised persons.

139. The most dangerous types of firearm, for example automatic weapons, are prohibited in the UK except on the authority of the Secretary of State, normally granted only to those, for example defence contractors, with a legitimate business need to possess them.

140. The tragic incident at Dunblane Primary School on 13 March 1996, when a teacher and sixteen children were murdered with a handgun, demonstrated the risks involved with the possession of firearms. Following a public inquiry, Parliament decided to prohibit most handguns in the United Kingdom, to strengthen controls on firearms generally, and to allow for compensation for former owners of prohibited handguns. The Government intends to keep this matter under close scrutiny to see what further steps, if any, might be needed to protect public safety.

Deaths in Police Custody

England and Wales

141. Every death in police custody must be reported to the Coroner without delay, to the Home Office within 48 hours, and to the Police Complaints Authority (PCA). The PCA supervises investigations into deaths where there has been a formal complaint or evidence of suspicious circumstances. Once the PCA is satisfied that there has been a full and proper investigation, a report is submitted to the Crown Prosecution Service to determine whether or not any officer should face criminal charges. In either case, the circumstances of a death will be aired publicly, either at trial or at an inquest. The PCA and the chief officer must decide whether or not to bring internal disciplinary charges. The PCA has the right to require this action to be taken.

142. The Home Office Police Research Group, which is independent of the police, made a study into the causes of death in police custody. Its report, published in July 1998, found:

- There were, at most, 3.2 deaths per 100,000 arrests, and many were not obviously preventable;

- The police often had to deal with people who have a higher than normal risk of sudden death (8 out of 10 of those who died had taken drugs or alcohol); and

- More than 90 per cent of deaths were related to the actions of detainees or to their medical condition.

143. The main causes of death were:

–	Deliberate self-harm (for example, suicide by hanging)	34%
–	Medical condition (for example, heart attack)	29%
–	Substance abuse (for example, alcohol poisoning)	25%

144. Deaths where officers' actions may have been associated were very rare (16 in 11.8 million arrests) and in most cases other factors were also involved (e.g. detainee's physical or medical condition and actions).

145. The number of black people who died was higher than might have been expected from their numbers in the general population; this was partly due to over-representation of black people in arrests. A higher proportion of black than white detainees died in circumstances where officers' actions may have been associated, but the numbers were far too small to draw any definite conclusions.

146. The main recommendations were:

- Health and behaviour checks (guidance on dealing with medical of psychiatric condition of the detainee was issued in January 1999);

- More training for police in the use of restraint;

- Better communication between police and medical personnel; and

- Improved maintenance of official records.

147. The report also raises these issues for future consideration:

- Medical training and development of guidance the help custody staff decide when to request medical aid;

- Viability of detoxification centres; and

- Effectiveness of CCTV and cell design.

148. The previous Administration recognised the growing public concern about the numbers of people from ethnic minorities who die in police custody and agreed with ACPO that, from 1 April 1996, the police would record the ethnic origin of those who die in police custody. Statistics of deaths in each force, including the circumstances of the death, the cause of death, ethnic group and

the inquest verdict, are published annually. In 1997-1998, there were 69 deaths of which 61 were White, three were Black, four were Asian and one was "other". This compares with 57 deaths in 1996-1997.

149. At a conference on deaths in police custody, in October 1998, held by the Police Complaints Authority, a Home Office Minister made a call for greater disclosure of information to the families of the dead person before to the inquest. Draft guidelines have since been drawn up In February 1999 the PCA published the recommendations arising from the conference.

Scotland

150. Scottish Police Forces attach great importance to the care and welfare of people in police custody. Despite the care and attention provided, there are occasions when detained people die in custody. On each occasion, a "fatal accident inquiry" must be held. In 1998, there were eight such deaths in Scotland, four of which occurred in police stations, and four in other circumstances, like on the way to hospital or shortly after release.

Deaths in prison

151. Coroners and the police are notified of every death in Prison Service custody. If the police consider there are suspicious circumstances, they will investigate. An independent coroner's inquiry before a jury is held in each case. A trained senior investigating officer from outside the establishment carries out an investigation for all unnatural deaths.

Review of death in custody cases

152. The CPS has introduced special procedures for cases of death in police and prison custody. Cases are co-ordinated centrally at CPS headquarters in London. A small team of senior CPS lawyers has been appointed to review the cases and send a copy of the case papers with the review note to Treasury Counsel for independent review. All cases are referred to the Director of Public Prosecutions. The CPS notifies the police of the decision, who in turn notify the family of the deceased. All death in custody cases are reviewed again after inquest verdicts.

Butler Inquiry

153. The Director of Public Prosecutions appointed His Honour Gerald Butler QC to head the Crown Prosecution Service (CPS) inquiry into the process and quality of decisions by the CPS in cases involving deaths in police or prison custody. In particular, the inquiry was asked to look into the handling of three cases (*Lapite*, *O'Brien* and *Treadway*). The report has not yet been published because of the current prosecution of the police officers involved in the death of Mr O'Brien.

Article 7 – Prohibition of torture and cruel, inhuman or degrading treatment

UN Convention Against Torture

154. The UK submitted its Third Report to the UN Committee Against Torture in March 1998 and was examined on the Report in November 1998.

European Convention for the Prevention of Torture

155. The European Committee for the Prevention of Torture most recently visited the United Kingdom and the Isle of Man in September 1997. The Committee's report and the UK's response have not yet been published.

Review of The Offences Against the Person Act 1861

156. The Government is considering responses to its consultation document *Violence: Reforming the Offences Against the Person Act 1861* (Appendix 32) which outlined its proposals for reforming the law on violent but non-fatal attacks on the person.

157. The Government's proposals were largely based on those in the Law Commission's Report No. 218, *Offences Against the Person and General Principles*, but on some issues the Government has recommended further review of the law. Its aim is to clarify and rationalise the law, which has been called "archaic and unclear".

158. A set of straightforward offences would replace the existing offences of grievous and actual bodily harm and assault. They would be:

- Intentionally causing serious injury;
- Recklessly causing serious injury;
- Intentionally or recklessly causing injury;
- Assault.

159. It is not yet clear when a Bill on Offences against the Person might be presented to Parliament.

Corporal punishment

England and Wales

160. Corporal punishment of school-pupils and of children in nursery education will become unlawful in England and Wales from 1 September 1999, under section 131 of the School Standards and Framework Act 1998.

Scotland

161. Corporal punishment of pupils at state schools, or of pupils at independent schools whose fees or costs are financed or supported by public funds, is unlawful (section 48(A) of the Education (Scotland) Act 1980, as amended). Section 294 of the Education Act 1993 further amended that section so that corporal punishment of pupils at independent schools who are not supported from public funds could not be justified if the punishment was inhumane or degrading.

162. The Scottish Executive published a consultation paper on 7 July proposing legislation to abolish corporal punishment in independent schools and pre-school centres. Such legislation would mean that corporal punishment would be illegal in all schools in Scotland.

163. In September 1997, the European Commission of Human Rights heard the application of *Child A v UK*. The child complained that injuries he sustained from his stepfather, who beat him with a stick, were in breach of Article 3 of the European Convention on Human Rights. The stepfather had been acquitted of assault occasioning actual bodily harm, relying on the common

law defence of "lawful correction" and "reasonable chastisement". The Commission concluded that this defence removed adequate protection from the child, in breach of Article 3, but that Article 3 does not impose an obligation on States to protect, through their criminal law, against any form of physical punishment, however mild, by a parent of a child.

164. The Government accepted that there had been a violation of child A's rights and that the law needed to be changed to protect children better, but added that mild chastisement, such as smacking, should not be banned. The applicant declined the Government's offer of an *ex gratia* payment and costs to settle the case, and the case proceeded to a full hearing before the European Court of Human Rights. The Court held that there had been a violation of Article 3 and awarded the applicant £10,000 and specified legal costs.

165. The Government's policy is to balance the freedom of parents to bring up their children as they think best with their duty to protect children from abuse and physical harm. The Government fully accepts that degrading and harmful punishment of children can never be justified even under the defence of lawful correction or reasonable chastisement. The Government is drafting a consultation paper on changes to the law to protect children better but it has made clear that it will not prohibit the sort of light smacking that is a normal part of parental discipline.

Police discipline and complaints

England and Wales

166. The procedures for handling complaints against the police and for considering disciplinary action are laid down under Part IV of the Police Act 1996 which came into force on 1 April 1999. They prescribe the same process of investigation as before, but now:

- Operate on the civil standard of proof (balance of probabilities rather than the criminal standard of beyond reasonable doubt);
- Include a fast track procedure to deal with officers against whom there is overwhelming evidence of serious criminal misconduct;
- Provide greater powers for proceedings in the absence of accused officers who report sick when facing disciplinary action; and
- Provide a means for dealing with unsatisfactory performance by police officers, with the possibility removing them when their efficiency cannot be brought up to standard.

167. The Chief Officer may suspend a member of his force where a complaint indicates he may have committed a disciplinary offence, whether or not the matter has been investigated. One of the effects of suspension is to stop any steps which may be taken towards retirement.

168. The Police Complaints Authority (PCA) supervises investigation of the most serious complaints against the police, including those involving death, serious injury or serious arrestable offences. The PCA also reviews the report of every complaints investigation and may recommend or direct that officers face disciplinary proceedings if none have already been taken. Where the conduct alleged would constitute a criminal offence, the Crown Prosecution Service first determines whether criminal charges should be brought.

169. Detailed figures on complaints against the police in England and Wales are published annually. The following table shows a marked increase in recorded cases between 1993 and 1994 no doubt in large part the result of a revised system in the largest force (the Metropolitan Police),

introduced in October 1993 to ensure that all complaints and their outcomes are properly recorded and the outcome reported.

Complaints against the Police: England and Wales (1993-1998)

	1993	**1994**	**1995-1996**	**1996-1997**	**1997-1998**
Cases	22,237	24,957	23,590	22,534	22,057
% change on previous year	+2.7	+11.8	-5.5	-4.5	-2.1
% sub-stantiated	2	2	2	2	2
% unsub-stantiated	28	24	22	27	25
% withdrawn	41	40	43	39	38
% informally resolved	29	34	33	32	34

Each case represents an investigation which may involve one or more separate matters of complaint, by one or more complainant.

Scotland

170. The Police and Magistrates' Courts Act 1994 enabled the Secretary of State for Scotland to make regulations for procedures for dealing with misconduct. The new regulations came into force on 1 August 1996, and apply to acts or omissions since that date. Behaviour amounting to a disciplinary offence before that date continue to be dealt with under the 1967 Regulations.

171. In 1997-1998, there were 358 police discipline and misconduct cases dealt with under the 1967 and 1996 Regulations respectively. 48 of these proceeded to a disciplinary or misconduct hearing, the outcomes of which were as follows.

Hearings	Discipline	Misconduct	Total
Dismissed	0	1	1
Required to resign	0	3	3
Reduced in rank	0	1	1
Reduced in pay	0	8	8
Fined	5	19	24
Reprimanded	4	5	9
Cautioned	1	1	2
Total	**10**	**38**	**48**

Of the cases that did not proceed to a disciplinary or misconduct hearing, most resulted in a warning by a senior officer, some were found to be unsubstantiated, and in a few of cases the officer resigned before disciplinary or misconduct procedures were completed.

172. The following table shows the decrease in complaints cases since 1993:

	1993	1994	1995-1996	1996-1997	1997-1998
Cases	1,841	1,654	1,444	1,333	1,261
% change on previous year	-9.4	-10.2	-12.7	-7.7	-5.4

Cases may involve more than one allegation and more than one complainant.

173. The 1994 Act also introduced a new power for Her Majesty's Inspector of Constabulary for Scotland to consider representations complainants dissatisfied with the way in which the police have handled their complaints and, where appropriate, to direct a Chief Constable to re-examine the case. The Secretary of State for Scotland or the relevant police authority can require the Inspectors of Constabulary to submit a written assessment of the case and the Chief Constable's report of his re-examination it. Complaints continue to be referred to the Procurator Fiscal when there is any suggestion that a police officer's action may have amounted to criminality.

Northern Ireland

174. The procedures for handling complaints against the police in Northern Ireland and for independent oversight of the complaints and discipline system by the Independent Commission for Police Complaints for Northern Ireland (ICPC) are described in paragraphs 147 to 151 of the Fourth Periodic Report. Figures for complaints against the police are published each year in the annual reports of the Chief Constable of the Royal Ulster Constabulary and of the ICPC.

175. ICPC must supervise the investigation of all complaints alleging death or serious injury and may supervise the investigation of any other complaint. In 1997 ICPC supervised 353 investigations out of 3,111 complaints. In 1998 the figure was 270 of 2,651 cases. An unusually large number of cases resulting from important incidents in 1997 created a backlog reducing the figures for completed cases in 1998. In such cases ICPC approves the appointment of the investigating officer and has the power to direct the investigation.

176. Once the criminal aspects of a case have been determined, the question of disciplinary action is considered. The Chief Constable notifies ICPC what action he proposes; if it is not to take disciplinary action, the ICPC may recommend or direct disciplinary action nonetheless.

177. Figures on police complaints over the last six years are below.

Complaints against the police: Northern Ireland (1993-1998)

	1998	1997	1996	1995	1994	1993
Complaints						
Completed	5,293	5,433	4,835	5,029	4,728	4,455
Cases						
Completed	3,671	3,444	3,309	3,478	3,406	3,034
Withdrawn	1,088	799	976	922	890	828
Dispensed with	688	916	519	566	780	714
Informally resolved	560	573	649	582	471	285
Unsubstantiated	1,363	1,089	1,090	1,346	1,242	1,169
Substantiated	52	67	75	62	23	38
Informal disciplinary action	65	84	70	115	12	29
Charges						
Brought by DPP	5	3	11	14	6	6
Formal disciplinary charges	22	14	39	23	11	12
Officers found guilty	5	1	8	5	6	2
Not guilty	0	6	5	13	2	5

Cases may involve more than one complaint.

Police Ombudsman

178. The Committee recommended procedures for the independent investigation of complaints against the police in Northern Ireland in paragraph 22 of its consideration of the Fourth Periodic Report. In 1995, the previous Administration established a review of the police complaints system. The Government accepted the recommendations of the report which was published in January 1997 and which received widespread support in Northern Ireland, and implemented them in Part VII of the Police (Northern Ireland) Act 1998.

179. Under the Act, a new office of Police Ombudsman will replace ICPC. The Ombudsman will be wholly independent, and will control the whole complaints process. He will investigate all complaints where it is alleged that the conduct of a police officer resulted in a death or serious injury, and may investigate other complaints or refer them to the police for investigation, possibly under his supervision. He may also investigate an incident where there has been no complaint, if he considers it in the public interest to do so.

180. If the Ombudsman determines that a criminal offence may have been committed by a police officer, he will send a copy of the criminal investigation report to the independent Director of Public Prosecutions (Northern Ireland) together with recommendations. If the Ombudsman or, in due course, the Director of Public Prosecutions, concludes that no offence has probably been committed, the Ombudsman may nonetheless recommend disciplinary proceedings. If the Chief Constable is unwilling to bring such proceedings, the Ombudsman may may direct that they be brought. They would be heard by an independent tribunal.

181. These extensive reforms are designed to ensure that the system is fair, easily understood and widely accessible, and to inspire public and the police confidence in the system. The Ombudsman should be appointed in September 1999. Early in 2000, the Office will be established and the ICPC abolished. A small number of police officers from across the UK may be recruited, on short-term appointments, for their expertise in criminal investigations and in training. They would be under the direction and control of the Ombudsman, and their appointment would help secure police confidence in the complaints system, which is an important aim.

182. Like England and Wales, Northern Ireland will be making changes to the disciplinary regulations of police officers. In particular, it will lower the level of proof required to the civil standard (see paragraph 166 above).

183. The UN Special Rapporteur on the Independence of Judges and Lawyers has made two reports about complaints. The Government has responded separately to these.

Police use of equipment

184. In 1994, following extensive evaluation and trials, the side-handled baton was adopted by several police forces. Metropolitan Police officers have been issued with straight nylon batons. These new batons replace the traditional wooden truncheon which was widely seen as ineffective. None of the new batons issued to officers has a higher maximum impact than the old wooden truncheon.

185. Following trials in 1996, the Association of Chief Police Officers (ACPO) recommended hand-held CS incapacitant aerosols for police officers defending themselves against attack. These sprays are now used by all but three police forces in England and Wales, and pilot schemes have been completed in two force areas in Scotland. Tests at a level similar to that which would be required for a pharmaceutical drug, and expert advice from the Government's Chief Medical

Officer and the Ministry of Defence, have established that CS presents no significant risk to human health. An independent expert Committee on Toxicity is further examining these effects. ACPO has given very careful consideration to how CS spray should be used, and to the aftercare of people who are sprayed with it to reduce symptoms like irritation to the eyes and nasal passages. Detailed guidelines have been issued to all police forces in England and Wales.

Prison service complaints and discipline

England and Wales

Training

186. All prison staff in England and Wales are made aware of the Prison Service's rules, instructions and orders which take into account the Government's international obligations on the treatment of detainees. All new prison officers in England and Wales go through an eleven week training course, when they are given detailed guidance on approved behaviour for dealing with prisoners, including those who must be controlled or restrained.

Code of Conduct and Discipline

187. The Prison Service Code of Conduct and Discipline referred to in the Fourth Periodic Report was introduced on 1 July 1993. One of the requirements of the Code is that it should be kept under review. A revised Code is due to be published in summer 1999. The main changes are:

- That there will be a single, comprehensive version of the Code (at present there is a basic version of the Code for general issue and a separate management version);

- Inclusion of guidance on the conduct of disciplinary investigations and hearings; and

- Additional guidance on level of penalties and on appeals.

Special Accommodation

188. Violent or refractory prisoners may be confined to "special accommodation" but only as a last resort and for the shortest time necessary. A member of the Board of Visitors and the Medical Officer are informed as soon as a prisoner is placed there and the prisoner's condition is monitored regularly.

Strip-searching

189. Every prisoner is searched when taken into custody and subsequently as the governor thinks it necessary (section 39, now 41, of the Prison Rules 1964). The Divisional Court took the view that section 39 confers a power to strip-search routinely. This includes routine strip-searching of prisoners after visits or trips to court. It enables prison officers to detect small items of contraband, such as drugs or weapons, which may not be discovered in an ordinary rubdown search. The Prison Service does not consider that strip-searching constitutes inhuman or degrading treatment, nor does the European Court of Human Rights (*Application No. 8317/78*).

Mother and baby units

190. The Prison Service announced a full review of principles, policies and procedures for mothers and babies in prison on 3 December 1998. The working group submitted its report to the Director-General of the Prison Service on 31 March 1999 and its recommendations are currently being considered. The report was published on 6 July 1999.

Forcible treatment

191. Prison medical staff are bound by the United Nations Code of Medical Ethics and Principles relating to Article 7 rights. Prisoners are free to accept or refuse any medical or psychiatric treatment offered to them. Consent of a parent or guardian is required where the prisoner is under 16.

Investigation of prisoners' complaints

192. The Third Periodic Report set out the procedures for making and investigating complaints against prison staff. The Request and Complaint system, which was introduced in 1990, is currently under review. A report is expected by the end of 1999.

193. In addition, the Prison Service is shortly to introduce a new system for the investigation of serious complaints and allegations by prisoners and others. This will include a procedure for the investigation itself (as well as any interviews) guidelines for the management and control of evidence, and set formats for reports. Report findings will usually be disclosed either publicly or to those with a legitimate interest in the complaint. Courses to train investigators are being introduced. The new arrangements aim to improve investigations, reports and accountability, and create a more open atmosphere.

The Prisons Ombudsman

194. The first Prisons Ombudsman was appointed in April 1994. His role is to consider individual grievances from prisoners, including those about disciplinary offences, once all internal procedures have been exhausted. He can make recommendations to the Prison Service and, where necessary, to the Home Secretary. His remit includes prisons contracted out to the private sector, contracted out services within prisons and the actions of those working in prisons who are not employed by the Prison Service, but it does not cover matters which are subject to litigation or criminal proceedings. He also examines the operation of procedures. Matters which are the subject of litigation or criminal proceedings, or which are related to the actions of individuals or bodies outside the Prison Service, are not within the Ombudsman's remit.

195. The Ombudsman investigated 497 complaints in 1998, or which 177 were upheld. He also made formal recommendations deriving from 241 complaints, of which 223 were accepted by the Prison Service.

196. The Home Secretary decided to extend the Ombudsman's remit to allow him to investigate advice from officials on which Ministers' decisions are made. Ministers have also agreed that the Ombudsman's office should be put on a statutory footing when a suitable legislative opportunity occurs.

Serious assault

197. All allegations or reported incidents of assault are investigated, and normally by a senior member of staff, either as part of an adjudication procedure or as an independent enquiry. Where the investigating officer concludes that a criminal assault has taken place and the circumstances fit the guidelines of ACPO and the Lord Chancellor's Department, the matter is referred to the police. Otherwise, the matter is dealt with by the adjudication procedure. If the victim wishes an alleged assault to be referred to the police, then his request is always granted.

Wormwood Scrubs

198. The Crown Prosecution Service has announced its intention to charge 25 staff at Wormwood Scrubs with assaulting prisoners. (Charges against three further officers remain to be decided.) The Prison Service will investigate allegations against other officers to determine whether there are cases to answer under the Service's standard of proof ("beyond reasonable doubt").

Northern Ireland

199. *Principles of Conduct*, a booklet published by the Northern Ireland Prison Service in 1990, set out the conduct expected of prison staff. It required staff to treat prisoners as individuals to encourage self-respect and personal responsibility, and to protect their rights while in prison. It prohibited discrimination on the basis of gender, race, religion, nationality or political allegiance.

200. A new Code of Conduct, introduced in February 1996, expands on the requirements in the 1954 Code of Discipline and provides for disciplinary action and sanctions where staff fall short of standards.

201. Prison Rules and Standing Orders were under review at the time of the Fourth Periodic Report. The Prisons and Young Offenders Centre Rules (Northern Ireland) 1995 came into operation on 1 March 1995, and revised Standing Orders, underpinning the Rules, became into force in July 1997. The Committee on the Administration of Justice, in consultation with the Prison Service, recently produced a guide, which includes information on prisoners' rights and duties of staff towards prisoners, and guidance on civil, criminal and other legal proceedings. In January 1999, copies were widely distributed within prisons. Following a review of prisoner requests and grievance procedures, a revised manual has been drafted and is currently at the consultation stage. The new procedures are scheduled to come into operation by Summer 1999.

Prison Officer Training

202. Induction training is designed to equip officers with a range of control and inter-personal skills to help them perform their duties and meet their responsibilities to prisoners. Human rights in prison is a recurring theme in much of the training provided. Awareness training in Equal Opportunities policy is now mandatory for all officers. Governors and civil servants employed in the Northern Ireland Prison Service.

Scotland

Prisons Complaints Commissioner

203. An independent Prisons Complaints Commissioner for Scotland was appointed in October 1994. His responsibilities are similar to those of the Prisons Ombudsman for England and Wales

(see paragraphs 194-196 above). The Commissioner considers complaints, including complaints about disciplinary proceedings, from prisoners who have exhausted internal procedures. He cannot deal with questions relating to convictions or sentence, matters under the control of outside bodies like the police, immigration authorities or Parole Board; or the First Minister's responsibility for determining the release in licence of adult mandatory life prisoners. Issues of professional judgement by medical, social work and related personnel in penal establishments are also excluded, though problems in obtaining access to such services are not.

204. The Complaints Commissioner has free access to prison establishments, papers and individuals. In exceptional cases, he may be asked to withhold information from a complainant or the public if disclosure would:

- Be against the interests of national security;
- Be likely to prejudice security measures;
- Put individuals at risk;
- Cause serious harm to the physical or mental health of a prisoner; or
- Be covered by public interest immunity.

The Complaints Commissioner publishes an annual Report to the Secretary of State for Scotland. A shorter version, excluding confidential information, is laid before Parliament.

Prison Rules

205. The 1994 Prison Rules have been revised and amended several times, most recently in March 1999. The changes include procedures for assigning, reviewing and telling prisoners about security categories; and an appeals procedure.

Code of Conduct

206. A new Code of Conduct for staff, applying throughout the Scottish Prison Service, was introduced in August 1998, replacing the previous Discipline Code. It contains clear rules and procedures for dealing with disciplinary matters and staff appeals against disciplinary action, and it includes the right of staff to have legal representation in disciplinary hearings.

Complaints against the military in Northern Ireland

207. An Independent Assessor of Military Complaints Procedures audits the procedures for handling non-criminal complaints against the Armed Forces in Northern Ireland (under the Northern Ireland (Emergency Provisions) Act 1996). The Assessor:

- Must investigate representations about the procedures adopted by the General Officer Commanding Northern Ireland (the GOC) for dealing with complaints;
- May investigate their operation;
- Reviews and make recommendations about these procedures;

- May require the GOC to review any particular case in which he considers the procedures to have operated inadequately; and
- May make recommendations to the GOC concerning such inadequacies, either on a general basis or in relation to a particular complaint.

208. In his annual report for 1997 (Appendix 33), the Independent Assessor found that the complaints procedures and their operation are given proper attention by senior command, and units are very aware of the adverse effect of inappropriate behaviour. He was also impressed by the high standard of training of Army personnel preparing for tours in Northern Ireland. He reaffirmed his view that an independent evaluation of the system of complaints in Northern Ireland should remain as long as the Army does.

Immigration Service

Training

209. Immigration officer induction courses, and staff reporting and appraisal courses, include training in equal opportunities and racial awareness. Staff involved in training are required to attend Equal Opportunities courses. A booklet entitled *Professional Standards and Best Practice Guidance* has been issued to all staff since 1997. Amongst other matters, it makes clear that harassment and discrimination are disciplinary offences.

Complaints Procedures

210. Immigration Service procedures for investigating complaints about the conduct and efficiency of its staff (and those contracted to work for it, such as interpreters) are contained in a handbook issued to all staff. In addition, entry ports have copies of an information leaflet, which advises members of the public of the procedures to follow if they are not satisfied with the service provided by Immigration Service staff or others for whom the Immigration Service is responsible.

211. Senior officers investigate complaints, and the Immigration Service Complaints Unit monitors the investigation and replies to the complainant. Where appropriate, the Immigration Service will provide a detailed explanation of what has gone wrong, offer a full apology and, in some instances, reimburse costs.

212. In 1994 the Government established an independent Complaints Audit Committee (CAC) to increase public confidence in the complaints system and ensure the integrity of the procedures. The Committee has the following remit:

- To satisfy itself about the effectiveness of the procedures;
- To draw management's attention to any weaknesses; and
- To make an annual report to the Home Secretary.

The Committee has access to all papers on investigations but is not involved in the investigation or in operational decisions in individual cases. Statistics on complaints are published each year in the CAC's Annual report. Although there has been a steady increase in the number of arriving passengers over the past five years (63.1 million in 1994 compared to an estimated 84.4 million in 1998), the number of complaints received has been declining.

Immigration Service: complaints (1994-1998)

	1994	1995	1996	1997	1998
Complaints received	488	492	434	397	369
Complaints completed	485	486	456	377	392
Complaints substantiated	140	141	133	119	115
Percentage substantiated	29%	29%	29%	32%	29%

A complaint may contain several different allegations and each category will be recorded as either substantiated or unsubstantiated.

213. There are seven categories of complaint: rudeness, inefficiency, criminal behaviour, racial discrimination, other unprofessional conduct, other unfair discrimination and miscellaneous.

214. There is a grievance procedure for detainees in immigration detention centres. Centres are run by private sector companies under contracts with the Home Office. Complaints against staff employed by the contractors to look after the well-being of detainees are investigated under the supervision of the Immigration Service and monitored by the independent Complaints Audit Commission. Detainees can also make complaints to the detention centre's visiting committee. Any complaint alleging conduct which would amount to a criminal offence, such as assault, is referred to the police.

Asylum

215. If the removal of an applicant from the United Kingdom would be contrary to its obligations under the United Nations Convention and Protocol relating to the Status of Refugees, then leave will be granted. If an applicant does not meet the criteria laid down in the Convention, he may nonetheless be granted exceptional leave for humanitarian reasons. A person will never be removed to a country where there are substantial reasons to believe that there is a real risk that he would be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Extradition

216. Acts of torture allegedly carried out in the territory of one of our extradition partners has traditionally been extraditable offences, provided the conduct alleged was within the terms of the relevant extradition treaty and legislation. In line with the UN Convention on Torture, section 134 of the Criminal Justice Act 1988 introduced the universal jurisdiction in respect of torture. The 1988 Act also provides for the power to extradite, to a country with which the UK has an extradition treaty, anyone accused of having committed torture after 1988 in any country. For States Parties to the Torture Convention with which the UK had no extradition treaty, extradition arrangements are provided for by the Extradition (Torture) Order 1997, which updated an earlier, 1991, Order. The Spanish request for Senator Pinochet is the first extradition request under the new powers. The case is at present before the Courts.

217. The United Kingdom's Extradition Act 1989 has safeguards to ensure that no one is extradited to any country where he is likely to face torture. All requests for extradition are considered closely by the executive and the judiciary.

Article 8 – Prohibition of slavery and forced labour

ILO Convention on Forced or Compulsory Labour

218. In 1997, the Committee of Experts to the International Labour Organisation (ILO) expressed the view that prisoners in the UK who work in prisons or workshops in public sector-run prisons, the management of which had been contracted out to private companies, were being "hired to or placed at the disposal of private individuals, companies or associations" in contravention of ILO Convention 29 on Forced or Compulsory Labour. The Committee recommended that this practice should cease or that prisoners receive employment rights (including wage levels) comparable with those earned outside prison.

219. The UK government replied that it believed that none of the existing arrangements for prisoners working in contracted out situations contravened Article 2 (2) (c) of the Convention and that prison authorities remained responsible for, and in control of, prisoners at all times. The UK government has undertaken, however, to consider this matter further and, in discussion with the ILO and other interested parties, to try to resolve this issue.

Community service sentences without consent

220. Section 38 of the Crime (Sentences) Act 1997 abolished the requirement that an offender should consent to the imposition of a community sentence. An offender sentenced to a Community Service Order is required to work without pay but cannot be physically compelled to do so. The work undertaken is not unjust or oppressive, does not involve unreasonable hardship, and is directed at the rehabilitation of the offender and reparation to society. An offender who refuses to undertake community service could not be made to do it, but would be brought back before the court and could be resentenced.

Article 9 – Liberty and security of the person

Police powers to arrest and detain

England and Wales

221. Police powers in the investigation of crime, the safeguards for the suspect in the Police and Criminal Evidence Act 1984, and the Codes of Practice issued under the Act, have been described in previous Periodic Reports.

222. The Codes have been revised since the Fourth Periodic Report to take account of the recommendations of the Royal Commission on Criminal Justice, and the provisions of the Criminal Justice and Public Order Act and other developments. They came into force on 10 April 1995.

223. Code A was revised again, in May 1997, to clarify police powers to stop and search groups or gangs who carry knives unlawfully, or weapons or controlled drugs. This Code was further revised, in March 1999, to clarify stop and search powers, and reflect legislative changes (section 8 of the Knives Act 1997, section 25 of the Crime and Disorder Act 1998 and section 13B of the Prevention of Terrorism Act 1989 (as inserted by section 1 of the Prevention of Terrorism (Additional Powers) Act 1996)). This revision came into force on 1 March 1999.

Northern Ireland

224. Police powers in Northern Ireland to deal with non-terrorist crime are equivalent to those in England and Wales. The Police and Criminal Evidence (Northern Ireland) Order 1989 is very similar to the Police and Criminal Evidence Act 1984. Under the Order, the Secretary of State for Northern Ireland must provide Codes of Practice. These are broadly the same as the Codes of Practice in England and Wales.

Scotland

225. Stop and search powers in Scotland, under the Criminal Justice and Public Order Act 1994, the Criminal Law (Consolidation) (Scotland) Act 1995 and the Knives Act 1997, include arrest with or without a warrant under common law and arrest and detention under the Civic Government (Scotland) Act 1982 and the Criminal Procedure (Scotland) Act 1995.

226. Police in Scotland can detain a suspect for up to six hours. He must be told why he is being detained and that he is under an obligation only to give his name and address. The place of detention, the time he was informed of his rights, and the identity of the police officer informing him, must be recorded. The detainee is also entitled to have someone informed of his detention and his whereabouts communicated to a solicitor. Anyone arrested is entitled to have the details passed to a solicitor and have a private interview with him before judicial examination or first appearance in court.

Video and audio recording of police interviews

227. Legislation allows audio-taping of non-terrorist suspects' interviews and police can video-tape interviews so long as the suspect does not object. A pilot evaluation of video with consenting suspects compared with audio recording is planned, but an amendment to section 60 of the Police and Criminal Evidence Act is needed in order to evaluate video recording fully. Ministers have agreed in principle to the amendment, but it is not yet clear when it will be possible to make it.

228. There is no statutory basis in Scotland for tape-recording of police interviews, although tape-recording of CID interviews with suspects in serious criminal cases was introduced in 1988. Until recently, interviews with terrorist suspects were not generally recorded. Police in England and Wales record interviews with terrorist suspects with consent. The Government intends, however, is to make recording mandatory throughout the UK in new, permanent, counter-terrorism legislation.

229. In Northern Ireland, the Emergency provisions Act 1998 made provision for police interviews with terrorist suspects to be audio-recorded and for the recording to be governed by a code. The system is operating alongside silent video-recording, which is also governed by a code and has been mandatory since 10 March 1998.

Compensation arising from civil actions against the police

230. The chief officer is liable for civil wrongs committed by members of his force, under section 88 of the Police Act 1996. The police authority must pay any damages awarded against him by a court, and may make *ex gratia* payments in settlement of claims.

231. The Government is concerned that the police service should learn lessons from civil actions so that it can provide a better and more professional service to the public. The Association of

Chief Police Officers (ACPO) has assured Government that all forces have appropriate systems in place which are subject to scrutiny by HM Inspectorate of Constabulary.

Legislation against terrorism

232. The Additional Powers Act 1996 strengthens police powers against terrorism. Section 13B enables a constable to stop and search pedestrians for articles which could be used for terrorist purposes, even if he has no grounds for suspecting that they have such articles. These powers can be authorised only for a specific area and by an Assistant Chief Constable, and an authorization must be confirmed by the Secretary of State within 48 hours, or it lapses. These powers are used infrequently and are carefully monitored. In 1997-1998, 1,591 searches were carried out under section 13B. In every year since its introduction, the reviewer of the PTA has been satisfied that the 13B power has been used properly and carefully.

233. The Government is reviewing counter-terrorism legislation (essentially, the Prevention of Terrorism (Temporary Provisions) Act 1989 and the Northern Ireland (Emergency Provisions) Act 1996 as amended in 1998.) A consultation paper, issued in December 1998, set out proposals for new, permanent legislation throughout the UK to deal with all types of terrorism. The Government is now considering what legislation should be introduced.

234. Following endorsement of the Belfast Agreement (see paragraph 12) by the people of Northern Ireland, the Government hopes and expects that the threat of Irish terrorism will diminish to the point where no additional special powers are necessary. The Government intends to improve security progressively and achieve normalisation as part of the implementation of the Agreement. Its position is that there will be no need for any temporary powers specific to Northern Ireland. The Government will judge whether it is necessary to include in the new counter-terrorism legislation temporary provisions which would be specific to Northern Ireland.

235. Meantime, the Northern Ireland (Emergency Provisions) Act 1998 extended the life of the 1996 Emergency Provisions Act by two years and made a number of significant changes (for example to introduce audio recording, to repeal the internment provisions, and to enable more cases to be heard by juries).

Length and conditions of detention

236. Under the Prevention of Terrorism (Temporary Provisions) Act 1989, the police may not hold a terrorist suspect before charge or release, subject to the authorization of the Secretary of State, for more than seven days. Detentions relating to Irish terrorism are rarely this long, and detentions of non-Irish terrorists do not exceed four days. The consultation paper, *Legislation Against Terrorism*, proposed that the length of detention should be subject to judicial authorization and provisionally concluded that a seven day maximum remains appropriate.

237. Police may delay terrorist suspects' access to a solicitor for up to 48 hours but only where they believe that it would lead, for example, to interference with evidence, or alerting of another terrorist suspect. This provision is very rarely used: the Government is not aware of any occasion in the last two years where a terrorist suspect in England and Wales has been denied access to a solicitor. In Northern Ireland, only four requests out of 526 in 1998 were denied. The Government believes, however, that the police should retain this power for use when necessary to prevent and combat terrorism.

Bail

238. Before 30 September 1998, a person who had previously been convicted in the United Kingdom of murder, attempted murder, rape or attempted rape, or of manslaughter resulting in imprisonment or detention, could not be granted bail if subsequently charged with or convicted of any such offence (section 25 of the Criminal Justice and Public Order Act 1994).

239. This prohibition has been replaced with a rebuttable presumption, which came into force on 30 September 1998, that bail should not be granted to such a person unless he can satisfy the court or the police otherwise. (This is a reversal of the general presumption in favour of bail that applies to less serious cases by virtue of the Bail Act 1976.)

Use of live television links at preliminary hearings

240. At present, many prisoners are escorted to preliminary court hearings and back to prison on the same day. Hearings are often very short and will be delayed or postponed if they arrive late at court. There are also significant costs, and risks to security, of transporting defendants.

241. The Crime and Disorder Act 1998 allows for pre-trial hearings of a defendant in custody over a live television link between the court and prison if it is available. Crown courts may decline to use the link, but if magistrates' court do so, they must give reasons. Both defence and prosecution may make representations. The scheme is being piloted in magistrates' courts, and it may be extended after a cost-benefit analysis.

242. The table below shows the number of remand prisoners and their length of detention before trial.

Numbers of remand prisoners and lengths of detention before court hearing

	1995		**1996**		**1997**		**1998**	
	No. of prisoners/days waiting		No. of prisoners/days waiting		No. of prisoners/days waiting		No. of prisoners/days waiting	
					Males			
Untried								
Under 21	15,608	43	16,342	42	16,238	41	16,492	36
Adult	36,740	61	39,203	57	41,854	54	43,665	51
Convicted but unsentenced								
Under 21	10,111	32	10,837	32	10,562	37	12,017	36
Adult	20,150	35	22,155	35	23,426	38	27,928	38
					Females			
Untried								
Under 21	630	34	690	31	811	28	960	24
Adult	2,310	45	2,653	43	3,163	38	3,580	37
Convicted but unsentenced								
Under 21	375	29	432	29	533	25	794	24
Adult	1,403	30	1,562	31	1,903	32	2,648	31

The data are provisional. They have been divided into "untried" and "convicted unsentenced", but an inmate could appear in both sets, and there would be some double counting if the figures were totalled.

Immigration

243. The UN Working Group on Arbitrary Detention visited the UK in September 1998 to examine procedures on the detention of asylum-seekers. The Group submitted its report on the visit in March 1999.

Power to arrest immigrants

244. The Immigration Acts confer powers to arrest immigrants who have:

- Entered illegally;
- Overstayed;
- Breached conditions of entry;
- Obtained leave to enter or remain by deception;
- Failed to abide by the conditions of temporary admission or release; or
- Are believed to have broken or to be breaking conditions attached to the grant of bail.

245. The Asylum and Immigration Bill, which is before Parliament, proposes that a police or immigration officer may arrest, without warrant, a person who obstructs an immigration officer or other person lawfully executing the Immigration Act 1971. Hitherto, immigration officers have relied on a police officer to make the arrest. Wherever possible, the powers of an immigration officer will follow those of the police under the Police and Criminal Evidence Act 1984 (PACE). (The Immigration Service's code of practice reflects those parts of the PACE Codes which apply to immigration officers. They will be revised to take account of any new powers that are introduced.)

Access to legal advice

246. All detainees have access to free legal advice and representation from the Immigration Advisory Service and the Refugee Legal Centre which are grant-aided by the Government. Detainees may choose their own legal adviser, and may be visited daily by their representatives without prior notification. Telephone, fax and postage facilities are available free.

Immigration detention

247. The Government believes that detention powers are a necessary part of effective immigration control. Detention is used only as a last resort and for the shortest time possible, to test a person's claims or establish whether he will comply with any conditions attached to the grant of temporary admission or release. Decisions are based on his immigration history, and no-one is detained solely because he has claimed asylum. Most of those detained can apply for bail to an Immigration Appeals Authority adjudicator, a chief immigration officer or, if held in a police station, a police inspector.

248. The Immigration and Asylum Bill proposes that immigration detainees should have a routine bail hearing between 5 and 9 days of initial detention. Where bail is refused there would be a further bail hearing between 33 and 37 days after initial detention. A challenge to the legality of detention will continue to be by way of *habeas corpus* or, in Scotland, judicial review.

Article 10 – Treatment of detainees

Sentencing policy

249. The Criminal Justice Act 1991 provides that a custodial sentence should be reserved for those whose offences are so serious that no other sentence is appropriate, or who are sexual or violent offender against whom the public needs protection. Imprisonment needs to be targeted. It may not be the best, or the most effective, penalty for less serious offenders, especially where tough non-custodial sentences (like drug treatment, training, action plan or reparation orders, introduced in the Crime and Disorder Act 1998) are available.

250. The Government, through the prison regime, is committed to helping prisoners think about their offences to reduce the risk of re-offending, and improve their educational and work skills to help them find a job on release. Each prisoner has a regularly reviewed sentence plan, with targets related to his needs. An Incentives and Earned Privileges Scheme came into operation in 1995. Positive behaviour, avoidance of drugs and progress with sentence plans, allow them to rise to the next level in the scheme, with privileges such as extra visits, higher paid jobs, extra spending money, "own clothes" and in-cell television.

Prison population

251. In 1998, England and Wales had an average prison population of about 65,300 (125 per 100,000 inhabitants). Since 1993 it has increased by 20,730. The remand element in the prison population increased by 18 per cent from 10,670 to 12,570.

252. Northern Ireland had an average prison population of about 1,507 (90 per 100,000 inhabitants), a decrease of 427 (22 per cent) since 1993. The remand population was 373, down from 426 in 1993.

253. Scotland had an average prison population of about 6,017 (118 per 100,000 inhabitants), an increase of 380 (7 per cent) since 1993. The remand population was 937, very similar to the figure in 1993.

Prison conditions

England and Wales

254. The Government remains committed to providing decent conditions for prisoners and eliminating overcrowding. From 1985, the largest prison building programme since Victorian times has delivered 25 new prisons with 13,500 new places. Since 1979, 13,000 more places have been provided at existing establishments, mainly in new houseblocks. A floating prison at Portland Harbour opened in June 1997, providing 400 places. New prisons which are privately managed under the Private Finance Initiative will have provided 3,100 places by the end of the year, and 1,300 new places will be created in houseblocks at existing prisons.

255. Creation of new places has been offset by the large increase in the prison population, and the same proportion of prisoners (18 per cent) are living in overcrowded conditions as in March 1994 when there were 15,000 prisoners fewer. In 1998-1999 an average number of 12,026 prisoners were held two to a cell designed to hold one.

256. The Government's long-term aim is for the great majority of prisoners to be held one to a cell because it is safe, decent and private. Single cells are provided in new prisons and new

houseblocks at existing prisons, with 24 hour access to sanitation for all prisoners (compared with 60 per cent in March 1991). No prisoners have been held three to a cell designed for one since March 1994, and no prisoners have been held in police cells for four years, the longest period since 1980.

257. The 1994 code of national standards for all prisons, covering such matters as food, clothing health, discipline, regimes, accommodation, security and preparation for release, is being up-dated. It fully reflects all treaty obligations and is achievable and measurable. Health care standards are being regularly audited from 1 April 1999.

Northern Ireland

258. Northern Ireland has three prisons and one young offenders' centre. All accommodation is less than 25 years old and with 24 hour access to sanitation. A programme of works continues to improve facilities for prisoners and staff. There is no overcrowding and most prisoners are in single cells. The early release, under the Belfast Agreement, of almost 240 scheduled offenders has led to the closure of several blocks in The Maze and the prison itself may close by the end of 2000.

259. Northern Ireland's female prisoner population averages around 24. Mourne House has a mother and baby unit and accommodates children up to the age of about 18 months. There are qualified medical staff. Visiting consultants hold regular clinics and prisoners may also attend hospitals outside as necessary. Midwives are provided by the local Health Authority.

260. Paramilitary violence and other high profile prisons considerations have militated against privately managed prisons in Northern Ireland, but the new political situation following the Belfast Agreement, including early releases, opens up the possibility of progress.

Scotland

261. In Scotland, a new 500-cell prison at Kilmarnock, opened in March 1999, is operated by a private sector company, and a 125-place houseblock was completed at Edinburgh prison in the autumn of 1998. By March 1999, 71 per cent of prisoner places had access to night sanitation, and work to produce more night sanitation is going on at Dumfries and will start at Perth, Barlinnie and Polmont later in 1999.

262. A 1990-1991 survey of all prisoners' views on prison management, facilities, conditions, relationships, atmosphere and change was repeated in 1994 and 1998. The results are published widely and inform the Scottish Prison Service's planning process. An information pack, with information prisoners' rights and welfare, is given to all prisoners on reception.

The Court Escort Service

263. The Criminal Justice Act 1991 allowed the private sector, under contract from the Prison Service, to assume responsibility for transporting prisoners to and from court. This duty was previously shared by police and prison officers.

264. The Act introduced safeguards which included:

- Court escort monitors to see that contracts are complied with and prisoners humanely treated;

- Volunteer lay observers who inspect the conditions under which prisoners are transported and held; they visit courts regularly, have access to prisoners, and submit annual reports to the Home Secretary;

- Certification of contractors' staff by the Secretary of State. All staff are checked for their suitability and are trained;

- Complaints procedures for prisoners in the custody of escort contractors. (The Prison Service monitors complaints and the contractor's handling of them. Contractors escort more than 1.5 million prisoners each year and very few complaints are received.)

265. Private sector escorting of inter-prison transfers began in April 1999. The 1991 Act, as amended by the Criminal Justice and Public Order Act 1994, applies to them.

266. The Northern Ireland Prison Service has been considering the possibility of contracting out court escorting, but will await findings of the pilot study on video links between prisons and courts (see paragraph 241) which began in May 1999.

Separation of convicted and unconvicted prisoners

267. An accused person is presumed innocent unless and until proven guilty. Courts remand defendants in custody principally to ensure that they reappear in court. They are not detained as punishment, nor for any training, treatment or rehabilitation, and therefore they enjoy all rights and freedoms which are not inevitably removed by imprisonment. Activities of unconvicted prisoners are restricted only to the extent necessary for security and effective administration.

268. The need for flexibility in the use of the prison estate, and the desire to locate as many prisoners as possible near home, has resulted in the revision of the Prison Rules to take account of the less rigid approach of European Prisoner Rule 11. This acknowledges that there may be mutual benefit, or at least no adverse affects, from allowing contact between different categories of prisoner if, for example, this is the only way for an unconvicted prisoners to enjoy the work or regime available only to convicted prisoners.

269. In England and Wales the principle of keeping convicted and unconvicted prisoners in separate cells separate is preserved, unless the unconvicted prisoners wishes otherwise. Unconvicted prisoners may be held on the same wing or landing as convicted prisoners at the governor's discretion, but are never required to share a cell with them. No complaints have been made to Prison Service headquarters about this policy.

270. The Northern Ireland Prison Service Rules require that remand prisoners are kept separate from sentenced prisoners as far as practicable. Where remand, particularly female remand, numbers are very small this principle may be overridden by the need to provide a varied regime and the benefits of association with others.

Disciplinary matters

271. The Prison Rules and Youth Offenders Institution Rules set out the offences against prison discipline. The semi-judicial disciplinary proceedings, set out in the Prison Discipline Manual, are conducted according to the rules of natural justice, and the adjudicator must be impartial, e.g. he must hear the case de novo. Charges must be proven beyond reasonable doubt, and a prisoner can appeal against the punishment awarded to Prison Service Headquarters. If the adjudication is

flawed, the finding may be quashed and or the punishment may be set aside or mitigated. Prisoners' avenues of appeal outside the Prison Service include the Prisons Ombudsman, legal advisers and Members of Parliament.

272. Since 1994, changes have been made to the prison discipline system in England and Wales. In 1995, maximum punishments were increased by 50 per cent, with the absolute maximum for the punishment of additional days in prison increased to 42 days; and offences of use of controlled drugs and alcohol by prisoners were created. In 1997, removal of bedding from a cell after a prisoner had been awarded a punishment of cellular confinement, was stopped. The charge, under Prison Rule 47 (21), of offending against good order and discipline has been abolished.

273. New guidance for governors and prison staff on adjudications was introduced in 1997 in Northern Ireland, and in March 1999 in Scotland. The Scottish guidance includes a clear statement of the principles of natural justice, and advice on considering requests by prisoners for legal representation.

Parole

England and Wales

274. There is nothing to add to previous reports which set out provisions of the Criminal Justice Act 1991 on early release of prisoners in England and Wales.

Scotland

275. The arrangements are the same in Scotland, except that in Scotland paroled prisoners remain on licence until the sentence expires, whereas in England and Wales the licence expires three-quarters of the way through the sentence.

Northern Ireland

276. There is no parole system in Northern Ireland where the numbers of terrorist-type offenders has made supervision impossible. Persons convicted of scheduled offences committed on or after 16 March 1989 and sentenced to five years or more, used to receive one third remission. They are now released half way through their sentence but remain on licence until the two thirds of sentence has expired. Inmates convicted of non-scheduled offences are also eligible for half-remission, but any inmate may be required to serve the unexpired portion if convicted of further offences.

277. Following the Belfast Agreement of 10 April 1998, the Northern Ireland (Sentences) Act 1998 allows the early release of scheduled offenders Under Section 1 of the Act. The Secretary of State has appointed independent Sentence Review Commissioners to administer that process. To qualify for release, a prisoner must:

- Be serving a sentence in Northern Ireland for a scheduled offence committed before 10 April 1998 or for an equivalent offence committed in another part of the United Kingdom;
- Not be, or be likely to become, a supporter of a specified organisation; and
- Not be likely to get involved in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland.

If the prisoner is serving an indeterminate sentence he cannot be released immediately if that would be a danger to the public.

278. The prisoner or the Secretary of State may challenge the declaration of the Sentence Review Commissioners but the ultimate decision on date for release on licence rests with the Commissioners. Once it is determined, the prisoner has a right to be released on that day or otherwise as provided for in Section 6 of the Act.

279. Prisoners who have received a date will be released two years after commencement if they are still in prison, provided they have served an equivalent period. The Secretary of State retains powers to vary this period.

280. Prisoners serving sentences of six months or more may be eligible for unescorted home leave for ten days at a time of their choosing and ten days at Christmas.

Electronic tagging

281. Electronic tagging as an alternative to custody is designed to benefit the public by restricting offenders' liberty for a certain period each day, and reduce recidivism by keeping them off the streets when they may be tempted to re-offend. An electronic "tag" is fitted, usually to the ankle, and it alerts a monitoring system if the offender is not at the specified place during the specified hours. Offenders are tagged under "curfew orders" in England and Wales, and "restriction of liberty orders" in Scotland.

282. Curfew orders for convicted offenders aged 16 and over were introduced by the Criminal Justice Act 1991. The curfew cannot exceed 12 hours a day, or a total duration of 6 months. The Crime (Sentences) Act 1997 allows the courts to impose a curfew order on fine defaulters who would otherwise have been imprisoned, on petty persistent offenders and on young offenders. For 10-15 year olds, the maximum curfew period is three months, and before making it the court must consider the likely effect of it on the offender's family circumstances.

283. Curfew orders were piloted in July 1995 and extended to further areas, and to young offenders, in 1998. The courts have used these orders rather than custody or more substantial community sentences. By 31 May 1999, 5,472 prisoners had been placed on curfew, and 265 had been recalled to custody; 1,736 were then on curfew. In Scotland, restriction of liberty orders were introduced by section 5 of the Crime and Punishment (Scotland) Act 1997. Pilot projects began in August 1998 and will run till March 2000.

284. The Crime and Disorder Act 1998 introduced "home detention curfew" for the last 60 days of sentences of three months and over but less than four years. Eligible prisoners must first pass a risk assessment. The object is to provide a gradual transition from custody to liberty. Home detention curfew began on 28 January 1999, and by 14 April 3,600 prisoners had been placed on it.

285. The Government plans to give all courts the power to make curfew orders by the end of 1999.

The discretionary life sentence system

England and Wales

286. The procedures for release of discretionary life sentence prisoners were described in paragraphs 217-224 of the Fourth Periodic Report. The Criminal Justice Act 1991 provided for the punitive part of the sentence for discretionary life sentence prisoners to be set by the trial judge, not the Secretary of State. It also introduced an independent element into decisions on release. This followed the judgements of the European Court of Human Rights in the cases of *Weeks* and *Thynne, Wilson and Gunnell*. The Court found that procedures were in breach of Article 5(4) of the European Convention on Human Rights, and detention after expiry of the punitive period should be considered by an independent body which had power to release the prisoner. Section 28 of the Crime (Sentences) Act 1997 empowers the Parole Board to direct release of a discretionary life prisoner who has served the punitive part of the sentence if it is satisfied that detention "is no longer necessary for the protection of the public".

287. Section 28 arrangements apply to:

- Discretionary life sentence prisoners where the Home Secretary has certified that the court would have applied section 28 had it been available at the time of sentence;

- Those given a discretionary life sentence on or after 1 October 1992 where the sentencing court orders that section 28 should apply;

- Those given the mandatory indeterminate sentences for murder committed on or after 1 October 1997 by someone between the ages of 10 and 18. This followed the judgements of the European Court of Human Rights of 21 February 1996, in the cases of *Singh* and *Hussain*. The Court found that the procedures for releasing detainees whose punitive periods (set by the Home Secretary) had expired breached Article 5(4) of the Convention because detainees were unable to have their continued detention reviewed by a court-like body; and

- Those who were "automatically" sentenced to life, under Section 2 of the Crime (Sentences) Act 1997, for a serious violent or sexual offence committed after 1 October 1997, were 18 or over at the time, and had a previous conviction for such an offence.

288. The role of the Discretionary Lifer Panels and the entitlements of prisoners whose cases are being considered by them were set out in the Fourth Periodic report. These provisions now also extend to Prison Panels which consider cases of those with mandatory indeterminate sentences.

Scotland

289. The statutory arrangements in Scotland are broadly similar to those in England and Wales. In Scotland, however, the judiciary, not Scottish Ministers, set the punitive element of the sentence. Legislation makes "automatic" life sentences available in Scotland but it has not yet been brought into force.

The system for mandatory life sentence prisoners

England and Wales

290. Abolition of the death penalty and the introduction in its place of mandatory life sentences, for adults convicted of murder, were endorsed by Parliament in 1965. Since 1967, the Home Secretary has had power to release mandatory life sentence prisoners but only if he is so recommended by the Parole Board, and after consulting the Lord Chief Justice and, if available, the trial judge. The Parole Board primarily advises him on risk, but he is not bound to accept any recommendation for release made by them. Decisions of the European Court of Human Rights have upheld this policy as consistent with the European Convention on Human Rights. In considering release on expiry of the period within the life sentence which must be served in custody for the purposes of retribution and deterrence, the Home Secretary may have regard to the public acceptability of release at that point as well as risk of re-offending.

Scotland

291. The statutory arrangements in Scotland are essentially the same as those in England and Wales, but in Scotland there is no tariff system. When the prisoner has served four years, Scottish Ministers, with advice of the non-statutory Preliminary Review Committee, decide whether and if so after what period the case should be referred to the Parole Board.

Bullying

292. In 1993, the Prison Service in England and Wales required all establishments to implement strategies to stop bullying between prisoners. In 1995, it set up a unit to help maintain control and safety for staff and prisoners. The unit's work includes:

- Commissioning research on bullying and programmes to combat it;
- Publishing an "anti-bullying strategy information pack";
- A pilot project for an integrated strategy against bullying;
- Workshops for staff leading the anti-bullying strategy at their establishment;
- A training pack aimed at raising awareness of staff to bullying.

293. Research in 1994 and 1995 showed that while 46 per cent of young offenders and 30 per cent of adults had been assaulted, robbed or threatened with violence in the previous month, most inmates felt safe most of the time.

294. In Northern Ireland, prisons have adopted anti-bullying strategies, involving removal of bullies and placing them where there is increased staff supervision so that they can be encouraged to confront their anti-social behaviour before being returned to normal location.

295. The Scottish Prison Service aims to introduce a new anti-bullying strategy during 1999. It will include training for staff to identify and control bullying of prisoners by other prisoners.

Work, education, training, drugs therapy and offending behaviour programmes

296. In recent years, more emphasis has been placed on:

- Activities which have meaning and purpose for prisoners and reduce the risk of re-offending;

- Education and work: 60 per cent of prisoners are deficient in literacy, and 75 per cent in numeracy; making them unqualified for 96 in every 100 jobs. Between 1996-1997 and 1997-1998 the percentage of prisoners in industrial workshops increased by 18 per cent to 8,866 and the percentage in agriculture and horticulture increased 24 per cent to 1,725. The new policy builds on the core curriculum of educational, life, social, and IT skills, with activities like physical education and work related training;

- Drug treatment and therapy (the strategy offers voluntary testing and access to drug free units as well as more effective measures to stop drugs entering prisons); and

- Offending behaviour programmes, which have been shown to reduce the risk of re-offending by 10 to 20 per cent.

297. Sentenced prisoners under 17 years must by law be provided with 15 hours a week education. The Prison Service is currently developing a broader curriculum for people under the school-leaving age of 16, taking into account any learning difficulties like dyslexia, attention deficits and hyper-activity, and any other educational needs. It will be based on individual needs, ability and aptitude.

Practice of religion

298. Prisoners' right to practise their religion is affirmed in the Code of Operating Standards published in April 1994. A Muslim Adviser is expected to be appointed in September 1999.

England and Wales

299. Every prison now allows prisoners more visits and longer visiting hours than the entitlements in the Prison Rules 1964. Some allow extended visits for prisoners' children, and others for the families of life sentence and long term prisoners. The Prison Service gives financial support to more than 80 visitors' centres at establishments. Prisoners' family support groups are consulted on visits policy.

Northern Ireland

300. Visits, even domestic visits which are "closed" because the prisoner has received illicit substances, are conducted in sight of but out of the hearing of prison staff. Prisoners can receive four domestic visits a month, from Tuesday to Saturday with also Sunday visiting in some prisons.

Telephones

301. In the United Kingdom cardphones are available for prisoners' use at all Prison Service establishments.

Sentence planning

302. Paragraphs 230 to 231 of the Fourth Periodic Report explain the purpose of sentence planning.

England and Wales

303. In 1994, the Prison and Probation Services reviewed sentence planning and concluded that sentence planning should not yet be extended to all prisoners. But they introduced a revised model in 1997, based on risk assessment, which supports an integrated approach to all assessments and decisions made about the prisoner. Prison Service establishments are audited for compliance with sentence planning policy.

Northern Ireland

304. Since 1995, three of the four Northern Ireland prisons have operated sentence planning for prisoners serving six months or more, and young offenders serving four months or more.

Scotland

305. The Scottish Prison Service is implementing "Sentence Management" for prisoners serving four years or more. It has developed from Sentence Planning and aims to meet the needs of prisoners better through a more integrated regime.

Throughcare

306. Throughcare of prisoners is described in paragraphs 236 to 243 of the Fourth Periodic Report.

England and Wales

307. The Prison Service is developing throughcare to prisoners in order to address offending behaviour and prepare prisoners for a responsible life in the community. This includes placing a high priority on elements of the prison regime described in paragraph 296 above.

308. Prison and Probation Services are working with HM Inspectorate of Probation and the Home Office to assess offenders for risk of re-offending and risk of harm to themselves and to others. The Services' Joint Programme Accreditation uses common standards and programmes to prevent relapse and support work in prisons. Together they are working on moving prisoners closer home, considering the possibility of joint casefiles, IT and resettlement hostels, and harmonising staff training, secondment, placements, and exchanges.

Northern Ireland

309. Throughcare in Northern Ireland, aimed at offending behaviour, was reviewed in 1998. At present there is no power to make supervision mandatory after release so the programmes remain voluntary.

Scotland

310. The throughcare of offenders is the statutory responsibility of the Scottish Prison Service and local authority social workers. National Objectives and Standards for throughcare social services were published in March 1997. They include:

- Minimum standards required for parole reports;

- Procedures for work to be carried out before release; and

- Supervision on release and procedures for reporting and enforcement.

Prevention of self-inflicted death

England and Wales

311. The table below sets out the number of self-inflicted deaths in prison in England and Wales.

Year	Total	Male	Female	Rate per 100,000
1993	47	46	1	105
1994	62	61	1	127
1995	59	57	2	116
1996	64	62	2	116
1997	68	65	3	111
1998	83	80	3	127

The increase in the numbers of self-inflicted deaths (not all are suicides) is no doubt partly the result of increase numbers in prison. The increase in the rate of these deaths (numbers per 100,000 of the prison population) has remained steady at about 7 per cent per annum for reasons which are not fully understood.

312. The percentages of self-inflicted deaths and of the prison population in each age group are shown in the following table.

Age	1994		1995		1996		1997		1998	
	Deaths	Prisoners	Deaths	Prisoners	Deaths	Prisoners	Deaths	Prisoners	Deaths	Prisoners
15-17	3	3	2	3	2	4	2	4	4*	4
18-20	13	14	12	13	17	12	12	12	13	13
21-24	18	21	18	20	16	19	19	19	11	18
25-29	29	22	24	22	27	22	22	22	21	21
30-39	18	25	36	26	20	27	28	27	40	28
40-49	18	10	5	11	13	11	12	10	8	10
50-59	1	4	3	4	5	4	4	5	2	5
60+	-	1	-	1	2	1	2	1	1	1

* In 1998 there were three suicides of juveniles (15-17 years).

313. This table shows that suicide among juveniles (15-17) is not disproportionately high. New regime standards are being developed for juveniles to improve the time they spend in custody.

314. In 1994, the Prison Service launched a strategy for identifying and supporting prisoners at risk from suicidal behaviour. Schemes for better designed cells, and less unfurnished accommodation for suicidal prisoners, are being piloted. More than two-thirds of prisons run Listener Schemes whereby The Samaritans help prisoners befriend fellow prisoners in distress.

315. The central Suicide Awareness Support Unit, the Internal Standards Audit Unit and the independent Inspectorate of Prisons all contribute to development of suicide prevention measures. The Inspectorate is about to publish its report on suicide and self-harm in prisons.

316. Since April 1998, a team led by a trained investigating officer from outside the establishment has investigated all apparent suicides. The Prison Service is developing a protocol for report on deaths in custody to be given to bereaved families and their legal representatives as soon as possible and normally before the inquest.

Northern Ireland

317. Policy on suicide awareness and prevention was revised in August 1996. It involves better initial mental health screening, Samaritan services and listener schemes.

318. Statistics on suicides in custody in Northern Ireland are provided below.

	Average population	**Suicides in prison**	**Suicides on temporary release**	**Inquest daily verdict awaited**
1993	1,907	0	0	0
1994	1,870	3	0	0
1995	1,703	2	0	0
1996	1,633	1	1	2
1997	1,632	0	1	2
1998	1,507	0	0	1

Scotland

319. The table below sets out figures for suicides in Scottish prisons.

	Under 21		**21 and over**		**Total**
	Male	**Female**	**Male**	**Female**	
1993	0	0	5	0	5
1994	4	0	12	0	16
1995	1	2	6	1	10
1996	2	1	11	2	16
1997	3	0	10	1	14
1998	1	0	11	1	13

11 of the 1998 cases are apparent suicides at this stage, pending completion of Fatal Accident Inquiries.

320. A revised strategy for suicide prevention, *Act to Care*, was implemented in June 1998 and will be reviewed in due course. Assessment and care are delivered through case conferencing which takes account of the needs the prisoner and his or her family, and involves them. A Ministerial Task Force reported in September 1998 on the apparent suicides earlier in the year. This has resulted in the appointment of a full-time national co-ordinator for Scotland to manage suicide risk by developing initiatives to evaluate the strategy over the next 18-24 months. A working group will be established in Autumn 1999, with representatives of the Prison Service, police, social services, courts, hospitals and agencies, to see how communication can be improved and best practice disseminated.

Young offenders

321. The Government wishes to make the youth justice system more efficient effective in preventing offending and re-offending. The first part of its programme of reform, in the Crime and Disorder Act 1998, introduces new measures to help young offenders and their parents to accept more responsibility for their offences, and to intervene more effectively when young people first begin to offend. The programme prefers sentences in the community, together with non-court and civil measures such as structured final warnings, child safety orders and parenting orders. These interventions emphasise prevention of re-offending behaviour action, reparation, remedying educational deficits and involving parents. Custody remains as a last resort.

Court-ordered secure remands

322. The Act also allows courts to remand certain juveniles to local authority secure accommodation, where they have been charged with a grave crime or have a history of absconding from open local authority accommodation and then committing offences. The powers, which came into force on 1 June 1999, will apply to 12-14 year olds of both sexes, 15-16 year old girls and vulnerable 15 -16 year old boys where a place in local authority secure accommodation has been found for them. The Government hopes to remove further remanded juveniles from the prison system As the supply of places allows (These powers in the Crime and Disorder Act 1988 amend or supersede earlier ones in the Criminal Justice Act 1991 and the Criminal Justice and Public Order Act 1994.)

Secure Training Orders

323. The Secure Training Order was introduced on 1 March 1998 for persistent young offenders aged 12 to 14 who have committed three imprisonable offences and failed to respond to community sentences. The court would impose this sentence if the offending was so serious that only a custodial sentence could be justified. The sentence may last for up to two years, half in custody in a secure training centre, and half under close supervision in the community.

324. The first training centre was opened in April 1998 and the second in July 1999. They are to be privately managed following standards set by Government and the Children's Homes Regulations which adhere to the principles of the Children Act 1989. They will have a positive regime with emphasis on education and training, and on preventing further offending. They are subject to regular inspections by the Social Services Inspectorate, and to oversight by Home Office staff at each centre who will monitor the welfare of the young people, and that ensure the managers of centre keep to the conditions of the contract.

325. The Inspectorate confirm that the first centre, after initial difficulties, is providing a much improved regime. From April 2000, the Youth Justice Board will take over responsibility for purchasing, commissioning and setting standards for the whole secure estate for juveniles. The aim is to ensure regimes which tackle offending behaviour and its causes, separation between juveniles and young offenders and provision of places nearer to home for minority groups and girls.

326. The presumption of *doli incapax* has been abolished because children are considerably more sophisticated than in the past, and are able to distinguish naughtiness from serious wrong. If they do not, early intervention is all the more important. Further, age and maturity can best be taken account of at the point of sentence, rather than by failing to prosecute at all.

Detention and Training Orders

327. The Crime and Disorder Act 1998 also introduced a new custodial sentence for young offenders, the Detention and Training Order (DTO). It will apply, subject to the tests set down in section 1 of the Criminal Justice Act 1991, to males and females aged 12-17 who have been convicted of an offence which would be imprisonable for someone aged 21 or over. If the offender is under 15 at the time of conviction, the court must also be of the opinion that he or she is persistent offender. The Act allows extension by the Secretary of State to 10-11 year olds, in cases where the Court considers that only a custodial sentence can protect the public from further offending by them. (The DTO replaces Secure Training Orders for 12-14 year olds and Detention in a Young Offender Institution for 15-17 year olds. The existing provisions regarding the sentencing of juveniles aged 10-17 convicted of grave crimes under section 53 of the Children and Young Persons Act 1933 remain unchanged. The sentence of Detention in a Young Offender Institution for 18-20 year olds is also unaffected.)

328. The DTO will last for 4, 6, 8, 10, 12, 18 or 24 months, half of which will be served in detention, the remainder under the supervision of a probation officer, social worker or member of a youth offending team. It may be served in a secure training centre, a young offender institution, local authority secure accommodation, Glenthorne Youth Treatment Centre, or any other such accommodation as the Secretary of State may direct.

329. The Home Secretary may allow early release in recognition of exceptional progress against an agreed sentence plan. Those sentenced to between 8, 10 or 12 months can be released either a month early or after the half-way point. Those serving sentences of 18 or 24 months can be released either one or two months early or after the half-way point. The Home Secretary must make an application to the youth court for late releases, which are imposed where the offender has made little or no progress in addressing his or her offending behaviour.

330. The Prison Service is introducing distinct conditions, with better accommodation, care and regimes, for 15-17 year olds remanded or sentenced to custody, 90 per cent of whom are in Prison Service accommodation. The new arrangements will include assessment of health, social, educational and vocational needs; services to prevent reoffending; involvement of the offender's family in his or her programme; and revised procedures for discipline, complaints and grievances.

Northern Ireland

331. Northern Ireland has one Young Offender's Centre, at Hydebank Wood, Belfast. The population averages 168 inmates; around 40 per cent of whom are on remand or awaiting trial. There is voluntary daytime education and vocational training, and classes in addressing offending behaviour and in social skills classes like parentcraft. A voluntary Community Work Scheme places inmates in residential homes for the handicapped and on conservation projects and, as they approach release, in paid employment.

332. A one year pilot under the Government's Welfare to Work initiative started in Hydebank Wood in February 1999. The purpose of the scheme is to make young offenders more employable and to help them get maximum benefit from the New Deal Gateway on release.

Secure Accommodation in Scotland

333. The First Minister for Scotland is empowered to make regulations on secure accommodation, under the Secure Accommodation (Scotland) Regulations 1986. A child may be placed in secure accommodation:

- After a children's hearing;
- By the court in certain circumstances under Parts V and XI of the Criminal Procedure (Scotland) Act 1995; or
- By the chief social work officer, with the agreement of the person in charge of the establishment.

334. Secure accommodation must be approved as suitable for the care of children. It is subject to review, at least every three years, by officers acting on behalf of the First Minister. HM Inspectorate of Schools inspects the educational provision. Local authority inspection units monitor the care in the authorities' secure units.

Reservation to article 10

335. The Government has reviewed its reservation to article 10 (2) (b) but does not consider that it can be lifted at this stage. It has invested significant additional funds to enable the creation of distinct prison conditions for 15 to 17 year old boys, which will ensure their greater separation from older prisoners. But mixing of young offenders and adult prisoners remains sometimes necessary because, for example, there are no suitable facilities for a particular young person. Young people may also have to be lodged in adult prisons on their way to and from court, or during a trial.

336. In Northern Ireland, there is no secure accommodation only for juveniles and the Prison Service has occasionally been required to take a very small number who, because of their unruly behaviour, cannot be retained in training schools. But it is unusual for young offenders and juveniles to share the same accommodation, and the Criminal Justice (Children) (Northern Ireland) Order 1998 now allows juveniles to be placed in semi-secure conditions in training schools; and Juvenile Justice Centre Rules came into force on 31 January 1999.

Mentally disordered offenders

England and Wales

337. The courts may impose a hospital order instead of a prison sentence for mentally disordered offenders who meet the criteria of the Mental Health Act 1983. In 1997, 912 people were sent to hospital under a hospital order. In addition, remand and sentenced prisoners who meet the criteria can be transferred from prison to hospital. In 1997, 745 were transferred, three times as many as in 1989. A new hospital direction power was introduced on 1 October 1997 enabling the higher courts, having passed a prison sentence, to direct that the offender be admitted to hospital for specialist medical treatment. Three such hospital direction have been made by the courts.

Northern Ireland

338. 51 mentally disordered offenders were transferred from prisons to hospitals between 1993 and 1998. Mentally disordered offenders who must be placed in high security accommodation were transferred to Great Britain as there are no high security hospital units in Northern Ireland.

Scotland

339. The court may impose a hospital order instead of a prison sentence on, or transfer from to hospital, a mentally disordered offender who meets the criteria under the Mental Health (Scotland) Act 1984. 1997-1998, 119 people were under a hospital order; 271 offenders were remanded to hospital or transferred to hospital before trial for assessment or treatment, and 48 convicted prisoners were transferred from prison to hospital for treatment. Hospital Direction Orders, introduced in 1998, apply as in England and Wales, but two have been made by the courts.

Recent developments in mental health

Scotland

340. A revised edition of the Code of Practice on the Mental Health (Scotland) Act 1984, with guidance on the detention and discharge of patients, should issue in 1999. A review of mental health legislation is expected to make recommendations to Scottish Ministers by summer 2000. A committee to review the sentencing and treatment of serious violent and sexual offenders, including those with a personality disorder, has been set up.

Dangerous Severe Personality Disorder

341. A consultation paper on managing dangerous severe personality disorder was published on 19 July 1999. The paper outlined two options for the indeterminate detention of dangerous people with severe personality disorder. Specialist interventions will also be developed to minimise the risk of serious harm these people present, and to enable them to re-enter the community safely.

Control and restraint techniques in prisons

342. The Prison Service has been reviewing control and restraint techniques, practices and procedures in order to update training. The review has taken account of new information about the effects of excited delirium and positional asphyxia. In November 1997, advice was issued to all staff on how to deal with violent prisoners. Current guidance (Prison Rule 47, as amended in 1999) gives clear instructions on the definition, use and recording of control and restraint.

Holding Centres – Northern Ireland

343. The Government attaches the greatest importance to the protection of the rights of those in police custody, and of ensuring that law enforcement operates in the best interests of justice. The Royal Ulster Constabulary also takes very seriously the care and well-being of detainees.

344. There are many statutory and administrative safeguards protecting persons in police custody, including:

- Silent video recording;
- Regular visits and examinations by qualified medical practitioners;
- Detailed custody records;
- The right to 8 continuous hours in any 24 free from questioning, travel or any interruptions;

- Breaks for all normal mealtimes;
- A requirement for continued detention of suspects to be reviewed every 12 hours;
- The right to legal advice;
- The right not to be held incommunicado; and
- Audio recording.

345. Allegations of ill treatment are thoroughly investigated by the police, and the Independent Commission for Police Complaints (see paragraphs 174-176 above) must supervise any case where there are allegations of serious injury, and may supervise any other which is in the public interest. All complaints are investigated for any breach of discipline.

346. The independence of the Commissioner and Deputy Commissioner for the Holding Centres provides assurance to the Government and the public that detainees are being fairly treated and not denied their rights, and that the safeguards are being fully and properly applied. The Commissioner and his Deputy make frequent but irregular visits to the Holding Centres and they can insist on attending any interview between the RUC and a suspect. During 1997, the Commissioner visited Holding Centres 29 times; his Deputy made 147 visits. They report annually to the Secretary of State, and in their sixth annual report, which was published on 23 April 1999, (Appendix 34) the Commissioner again found nothing to criticise in the procedures of Holding Centres or their treatment of detainees.

Detention and removal of immigrants

347. Immigration officers, and private companies running detention centres, are fully aware of the need to treat all people with respect, and without discrimination on grounds of gender, race and religion. When a female immigrant is being interviewed by a male immigration officer, every effort is made to see that a woman is present and, if interpretation is necessary, that the interpreter is a woman.

348. An unaccompanied minor would be detained only if other more suitable accommodation could not be found immediately. Detention would only be for the night, and the Social services Department would take responsibility for the minor's care. Minors, and those whose age is disputed, are referred to the Refugee Council Children's panel of Advisers.

349. A family would be detained only in exceptional circumstances, most usually for the purpose of effecting removal. In most cases, the family would be offered the chance to report voluntarily to the airport. The period of detention before removal is, at most, a few days. The period of detention before removal is, at most, a few days. Children would normally be detained with, and not separated from, their family.

350. Some 30,000 people are removed from the UK each year, either because they have been refused entry or because their removal is being enforced. Fewer than 3 per cent of those removed are escorted. Reasonable and proportionate force may be used where the person has a serious criminal record or where there is reason to believe he or she poses a threat to public order or safety, but under no circumstances can any form of physical restraint be placed around the mouth, neck or head.

351. The physical and mental health of any immigrant is fully taken into account in the decision whether detention is necessary. All detainees are offered medical checks on arrival in detention centres and women who are medically examined will be accompanied at all times by a female nurse. The Immigration and Asylum Bill provides for compulsory medical examination where there are reasonable grounds for believing that the detainee may be carrying a disease endangering the health of others. Private sector companies which run detention centres are required in their contracts to provide healthcare to the standards of the NHS, and which includes psychiatric assessment and identification of those who may have been tortured. Other healthcare is provided by local hospital trusts. There is no evidence of significant delays in provision of medical treatment by contractors.

352. Immigration detention centres provide secure but humane housing with a relaxed regime and as much freedom of movement and association as possible. Detainees have free legal advice, visits from friends, relatives and legal representatives, recreational and educational facilities, healthcare, catering and religious facilities. HM Chief Inspector of Prisons is invited to inspect centres and in recent reports has commended many examples of good practice and commented favourably on the facilities. All those detained under the Immigration Act and held in Prison Service establishments are treated under the rules and administrative procedures as though they were unconvicted prisoners (see paragraph 267-270 above).

353. Detention is never used as a punitive or demeaning measure, or merely because someone has claimed asylum. It is sometimes necessary, for reasons of geography or security, to hold detainees in prisons. Some show behavioural or medical problems which make them unsuitable for the relaxed conditions of a detention centre. HM Chief Inspector of Prisons found that the services for immigration detainees at Rochester Prison were generally of a high standard, and the United Nations Working Group on Arbitrary Detention concluded that conditions of detainees at Rochester "were humane and consistent with international legal standards".

354. Contractors who run detention centres may use reasonable force to detain in accordance with Immigration Service powers and are trained by Prison Service personnel in control and restraint techniques. The Immigration and Asylum Bill proposes a statutory framework for the use of special control and restraint procedures in detention centres. These proposals are similar to the legislation which already governs procedures at prisons managed by the private sector.

Article 11 – Imprisonment for inability to fulfil a contractual obligation

355. The position is unchanged from previous Periodic Reports. Domestic law in the UK does not permit the imprisonment of any person on the ground of his failure to fulfil a contractual obligation.

Article 12 – Freedom of movement

Electronic tagging

356. Electronic tagging, under Home Detention Curfew Orders (England and Wales) and Restriction of Liberty Orders (Scotland), is discussed under Article 10 in paragraphs 281-285 above.

Immigration

357. The UK's position on the Right of Abode, and hence on Article 12(4), has not changed since the Fourth Periodic Report.

Exclusion Orders

358. The number of exclusion orders has dropped significantly over the past five years, and the remaining 12 were revoked by the Home Secretary in October 1997. The power has lapsed, and the Government has made clear that it should not be re-enacted.

Sex Offenders Act 1997

359. The Sex Offenders Act 1997 came into force on 1 September 1997. Part 1 of the Act obliges offenders who have been convicted of sex offences against children and other sex offences to notify the police of their name and address and any subsequent changes. Nothing in the Act restricts the movement of sex offenders, but failure to register details with the police is a criminal offence. The police can use this information to monitor the movements of sex offenders who come into their area and identify potential suspects. Part II of the Act provides the courts in the UK with the jurisdiction to deal with British citizens who commit sex offences against children abroad.

Sex Offender Orders

360. The Crime and Disorder Act 1998 introduced civil Sex Offender Orders which came into effect on 1 December 1998. (They were introduced in Northern Ireland in June 1999 under the Criminal Justice Act (Northern Ireland) Order 1998). The police can apply to the magistrates' courts for an order against a sex offender (an individual convicted or cautioned at any time for any of a list of serious sex offences) who has behaved in such a way as to give the police reasonable cause to believe that an order is necessary to protect the public from serious harm. Application for an order depends on the court being persuaded of the risk the offender currently poses to the community.

361. An order can prohibit the sex offender from behaving in certain ways, e.g. from loitering near school playgrounds, if this is considered necessary to protection the public from serious harm. It might therefore restrict an offender's movement, but it cannot impose any requirements on him. Breach of an order is a criminal offence, punishable with a maximum penalty of five years imprisonment. An order lasts at least five years and can be indefinite.

Restriction orders

362. The Courts may issue restriction orders on those convicted of football-related offences, who will be required to report to a police station when designated football are being played overseas (Football Spectators' Act 1989). About 150 restriction orders are in force.

363. The Government fully supports a Private Member's Bill at present in Parliament which will extend those offences deemed to be football-related. It also makes the restriction more effective by, for example, giving the courts powers to require the person covered by the order to submit his passport to a police station before the match, and to find him guilty of an offence if he fails to comply with a condition of the order.

Article 13 – Expulsion of aliens

Deportation and removal

364. The Asylum and Immigration Act 1996 introduced an offence of obtaining or attempting to obtain leave to enter or remain by deception, and powers to deport those who use deception. It is normal practice to deport rather than charge them. Under the Act the spouse and any children under 18 of a person ordered to be deported on any grounds can also be deported. Previously this power applied only to the wife (and children) of a deported husband and children were not normally deported.

365. The Immigration and Asylum Bill (see paragraph 378) will extend the current deception offence so that it applies to those who (seek to) secure the avoidance, postponement or revocation of enforcement action by deception. The Bill also proposes that those who overstay, breach conditions of their leave, or obtain leave to enter or remain by deception, will be subject to administrative removal, as will their spouse and any dependent children. They will be able to appeal against the decision from abroad. Deportation, with the right of appeal against the decision from the United Kingdom, will be retained for those recommended for deportation or whose presence is not conducive to the public good.

Statistics on deportations and removals from the UK

366. The number of people removed following deportation action in 1994-1998 is set out below:

	1994	**1995**	**1996**	**1997**	**1998***
Deportation orders enforced	670	700	900	820	690
Supervised departures	950	860	700	730	660
Departed voluntarily	300	360	400	520	350

* Provisional figures.

The number of people removed following illegal entry action in 1994-1998 is set out below:

	1994	**1995**	**1996**	**1997**	**1998***
Removed as illegal immigrants	2,740	2,560	2,860	3,680	4,720
Departed voluntarily	550	590	540	820	830

* Provisional figures.

Asylum

367. The number of asylum-seekers entering the UK rose sharply from around 4000 in 1987 to just under 44,000 in 1991. New procedures to deter fraudulent applications reduced numbers in 1992 and 1993 but they returned to just under 44,000 in 1995. The numbers fell back again in 1996 after benefits to asylum-seekers were restricted, but rose again to just under 45,000 in 1998. The volume of applications has led to a large backlog.

368. The percentage of asylum-seekers who were recognised as refugees, according to the definition in the 1951 UN Convention relating to the Status of Refugees, (i.e, those with a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion), fell from 23 per cent in 1990 to 3 per cent in 1992 but rose to 17 per cent in 1998. 12 per cent of decisions in 1998 were to grant exceptional leave to remain. This is a significantly smaller proportion than before the Asylum and Immigration Appeals Act 1993. The remaining 71 per cent of decisions in 1998 were outright refusals, including refusals on safe third country (see paragraph 374 below) and non-compliance grounds. All failed asylum-seekers have a right of appeal to a Special Adjudicator before removal to the country to which they fear to return.

369. The Asylum and Immigration Appeals Acts 1993 and 1996 aimed to streamline procedures and thereby reduce abuse. There are strict time limits within which any appeal should be determined. There is an accelerated procedure for any appeal where the Secretary of State has certified a claim. A case may be certified for a number of reasons including being manifestly unfounded, fraudulent or otherwise frivolous or vexatious. The intention is to determine the accelerated appeals within 10 working days of their receipt by the Immigration Appellate Authority. If the independent Special Adjudicator upholds the Secretary of State's certificate there is no further right of appeal to the Immigration Appeal Tribunal. The Immigration and Asylum Bill proposes significant changes to the appeals system, including the introduction of a single immigration appeal.

370. Failed asylum seekers who are nationals of designated countries of destination, i.e. those where there is in general no serious risk of persecution, (currently Bulgaria, Cyprus, Ghana, India, Pakistan, Poland and Romania), may have their cases certified thereby attracting the accelerated appeals procedure. The Government is satisfied that this has not lead to any unfairness but the Immigration and Asylum Bill will replace the designation of countries with arrangements to certify cases using the case specific provisions for accelerated appeals in the current legislation.

371. If the Special Adjudicator dismisses the appeal the appellant may apply for leave to appeal to the Immigration Appeals Tribunal on a point of law unless the Special Adjudicator upholds the Secretary of State's certificate in which case he will have no further right of appeal. Section 9 of the 1993 Act provides a further right of appeal on a point of law to the Court of Appeal (the Court of Session in Scotland).

372. The Secretary of State may also curtail any existing leave to enter or remain when refusing a claim for asylum. This would lead to deportation proceedings and the service of a notice of intention to deport would give rights of appeal against both the asylum refusal and deportation.

Dublin Convention

373. The Dublin Convention, which came into effect in the United Kingdom on 1 September 1997, provides an agreed EU criteria for determining which Member State is responsible for considering asylum claims made in the EU by non-EU nationals. The criteria include:

- Whether the applicant has a close family member recognised as a refugee in another Member State;
- Whether another Member State has granted the applicant a residence permit or visa;

- The place of any illegal entry into the EU; and

- Whether the applicant has previously applied for asylum in another Member State.

Applicants can be transferred between Member States only where the receiving State has accepted that it is responsible for dealing with the claim under the terms of the Dublin Convention.

Third Country Removals

374. An applicant may be refused asylum if he can be returned to a safe third country. If it is an EU member state, the Dublin Convention applies. If it is not a member state, the applicant would not be removed unless he had sought protection of the authorities in the third country, or there is other evidence that he would be admitted there. If the third country is an EU member state or a state designated by Parliament (currently the USA, Canada, Norway and Switzerland), an appeal against refusal of asylum can be exercised only after the applicant has left the United Kingdom.

ECHR case of *Chahal*

375. In November 1996, the European Court of Human Rights found against the United Kingdom in *Chahal*. Mr Chahal had obtained indefinite leave to remain, but was detained and due to be deported without a statutory right of appeal for reasons of national security. The Court ruled against the UK on the grounds that:

- To return the appellant to his country of origin would have violated Article 3 of the ECHR;

- There had been no satisfactory review of the lawfulness of the detention; and

- There was no effective remedy for breach of Article 3.

376. The Special Immigration Appeals Commission Act 1997 was therefore introduced, establishing a right of appeal to a new commission for those deported on national security and some other grounds. If the Commission considers that an applicant's fears of torture, inhuman or degrading treatment or punishment are founded are based on grounds other than ace religion, nationality, membership of a social group or political opinion, deportation proceedings will be stopped. If there were strong doubts about the genuineness of a claim, for example if the applicant was an agent of the government he claimed to fear, proceedings would continue. The Commission will probably deal with about five to ten cases a year. By May 1999, it had heard five bail applications and its first substantive hearing is listed for June. The Commission's decisions will be published and will bind the Home Secretary.

Immigration and Asylum White Paper and Bill

377. In July 1998, after reviewing the whole system of immigration control, the Government published a White Paper *Fairer, Faster and Firmer – a modern approach to immigration and asylum* (Appendix 35). It proposes reform of the current system which has become slow and outdated, with huge backlogs. This is unfair to genuine applicants and encourages others to get round the system.

378. The Immigration and Asylum Bill, which deal with these shortcomings, was introduced in Parliament on 9 February 1999. It will:

- Speed up the immigration and asylum appeals system;
- Create new arrangements to support asylum-seekers in genuine need;
- Modernise immigration control to speed genuine applications and deal with abuse;
- Strengthen enforcement and tackle clandestine entry;
- Regulate immigration advisers; and
- Extend the judicial element in the detention process.

The Government hopes the Bill will gain Royal Assent in the Autumn.

Extradition

379. The United Kingdom has extradition arrangements with over 100 countries. Requests are scrutinised by the judiciary and executive and are subject to the Extradition Act 1989. The person can make representations before the Secretary of State takes a decision. The Extradition Act contains safeguards to protect human rights; for example, the person will not be returned if the offence is political. A decision to extradite is subject to judicial review. A simplified procedure applies to requests from the Republic of Ireland, subject to the Backing of Warrants (Republic of Ireland) Act 1965.

380. Fugitives will be surrendered only for acts which are serious extraditable offences against the law of the requesting state and which, if committed in the United Kingdom, would be extraditable offences in its law. (It is a generally accepted principle, known as the doctrine of specialty, that an extradited fugitive should be prosecuted in the requesting country only for the offences on which his extradition was granted.)

381. The 1957 European Convention on Extradition is in force in most countries of western and central Europe, including the United Kingdom. Requesting countries party to the Convention no longer have to establish a *prima facie* case. This speeds up extradition between countries in whose criminal justice system members of the Council of Europe have confidence. All other safeguards in the Extradition Act continue to apply.

382. The table below sets out the number of people extradited to and from the United Kingdom. Some countries, but not the United Kingdom, have a constitutional or legal bar on the extradition of their own nationals. The numbers therefore include British Citizens.

	People extradited from the UK	People extradited to the UK
1993	27	21
1994	35	29
1995	31	14
1996	35	13
1997	43	28
1998	44	38

Article 14 – Procedural guarantees in civil and criminal law

Delay in criminal proceedings

383. The Fourth Periodic Report stated that new custody time limits seemed to have eliminated the worst delays in the system. Recently, however, cases are taking longer to complete although fewer are coming to court. The 1997 Narey Report, *Review of Delay in the Criminal Justice System* (Appendix 36), concluded that procedures needed to be improved and expedited. Most of the recommendations were accepted and those needing legislation were included in the Crime and Disorder Act 1998. The main measures either have been, or are being, piloted before national implementation and are as follows:

Prompt handling of straightforward guilty pleas

- Bail cases to be listed for hearing at the first available court sitting (section 46 of the Act);
- Some CPS staff to work with officers in police stations, getting straightforward cases ready for court;
- The Director of Public Prosecutions to delegate to non-lawyer CPS staff cases with straightforward guilty pleas and present them in court (section 53 of the Act).

Improved management of contested cases in magistrates' courts

- A single justice, and justices' clerks, may be authorised to deal with the pre-trial stages of cases with some exceptions, e.g. clerks cannot remand in custody or determine disputed bail issues (section 49 of the Act);
- The powers may be exercised at "early administrative hearings" shortly after charge, or at hearings held later during a contested case. (Cases are put to a full bench of magistrates only when they are ready to proceed to completion.)

Starting indictable-only cases in the Crown Court

- After a hearing in a magistrates' court to deal with bail, cases which must be tried in the Crown Court must be sent there "forthwith" to the Crown Court, and defendants wishing to plead guilty have an earlier opportunity to do so.

Statutory time limits

384. The Government intends to introduce statutory time limits within which the prosecution must bring cases to trial. Although the Prosecution of Offences Act 1985 provides for such "overall time limits" and for custody time limits (which restrict the time for which an accused may be held in custody on remand), only the latter have been put into effect. The Crime and Disorder Act amends the time limits in the Prosecution of Offences Act 1985 to allow:

- Different time limits for different types of cases, for example, shorter limits in juvenile cases, or longer ones for serious fraud cases;
- Stricter criteria for the court's decision to grant extensions;

- The staying and re-institution of proceedings in some cases, rather than acquittal of the defendant;
- Auspension rather than stopping of time limits when a defendant absconds; and
- Statutory limits for young offenders for the times between arrest and first listing, and between conviction and sentence.

The Government plans to pilot statutory time limits from autumn 1999.

Royal Commission on Criminal Justice

385. The Royal Commission on Criminal Justice reported in June 1993 on the effectiveness of the criminal justice system in England and Wales in securing the conviction of the guilty and acquittal of the innocent. The Commission made 352 recommendations which covered the investigation and prosecution of offences, the rules of evidence, the conduct of trials and pre-trial procedures, forensic science evidence and appeals against conviction normal appeals have been exhausted. The previous Administration published its final response in June 1996 (Appendix 37) accepting wholly or in part 204 recommendations, all of which had been or were being implemented. It decided to consider 58, and not to implement 44 recommendations. The remaining 46 recommendations were not primarily for government. Many of the recommendations have now been implemented in legislation. The previous Administration also issued revised Codes of Practice under the Police and Criminal Evidence Act 1984 to cover recommended changes in police procedures.

Right of silence

386. The Criminal Justice and Public Order Act 1994, which came into force in England and Wales on 10 April 1995, introduced provisions similar to those in Northern Ireland. They preserve the right of a suspect to remain silent when questioned by the police but permit inferences to be drawn from silence if:

- A suspect has, without reasonable explanation, failed to tell the police something which he later uses in his defence;
- A defendant does not give evidence on his own behalf at trial; or
- A suspect fails to account for his presence at a particular time and place or to account for objects, substances or marks on his person at the time of his arrest.

387. There are important safeguards:

- The police have to warn a suspect, under caution, about the possible consequences of remaining silent;
- Continued presumption of innocence;
- The prosecution must still prove its case beyond reasonable doubt; and
- The court cannot convict solely on the ground that the defendant remained silent.

388. The European Court of Human Rights, in the case of *John Murray*, held by a majority of 12 to 7 that denial of legal advice to a suspect for up to 48 hours during police questioning, and the drawing of inferences from his silence, together amounted to a breach of Article 6, although separately neither would have amounted to a breach.

389. The Government therefore announced on 1 December 1998, that it would amend the legislation and the Codes of Practice to prohibit the drawing of inferences from silence when a suspect is questioned at a police station while denied access to legal advice. Legislation, in the Youth Justice and Criminal Evidence Bill, is expected to become law in the autumn, and will be extended to Northern Ireland. In the interim, the Government has issued guidance to the police and prosecutors to ensure suspects have access to legal advice before being asked inference-bearing questions at a police station, and prosecutors have been advised not to rely on inferences drawn from silence before access to legal advice was granted.

390. Research, published in December 1997, found that percentage of suspects refusing to answer any questions fell from 10 per cent to 6 per cent, and those who refused to answer some questions fell from 13 per cent to 10 per cent. The research also shows that suspects arrested for serious offences exercise their right of silence more frequently than others, although the proportion has fallen from 17 per cent to 14 per cent.

Jury trial

391. In England and Wales, offences are classified into there categories: summary offences which are tried in magistrates' courts; indictable only offences which can be tried only by a jury in the Crown Court; and either way offences, which can be tried in either court. The decision on which court should try either way offences is made by magistrates. If they decide it would be appropriate for them to take the case, the defendant may elect for jury trial.

392. In July 1995, the previous Administration sought views on three possible ways of reforming trial by jury:

- That defendants accused of offences that may be tried either summarily in the magistrates' courts or on indictment in the Crown Court, should no longer have the right to insist on trial by jury (as recommended by the Royal Commission on Justice);

- That particular either way offences should be reclassified as triable summary only; and

- That defendants should be obliged to enter a plea before the mode of trial is decided.

The previous Administration decided on the third option, and it was introduced in the Criminal Procedure and Investigations Act 1996 and came into force on 1 October 1997.

393. The Review of Delay in the Criminal Justice System endorsed the Royal Commission's view that defendants should no longer be able to insist on trial in the Crown Court. The Government undertook to reconsider and a more detailed consultation paper was published on 28 July 1998 (Appendix 38). When Parliamentary time permits, it will introduce legislation to remove the ability of defendants to elect for trial in cases which are triable on indictment at the Crown Court, or summarily in the Magistrates' Court.

394. The Government's consultation paper, *Juries in Serious Fraud Trials*, (Appendix 39), invited views on whether, in complex fraud trials, it would be better and inspire more public confidence if the traditional jury were to be replaced by special juries, a single judge, a panel of judges, a tribunal, or trial by single judge with a jury for key decisions. The Government is considering the responses.

Prosecution disclosure

395. The prosecution has a duty to disclose to the defence both the evidence that it will present to the court as the prosecution case ("used material") and "unused material" that is relevant to the case. The Royal Commission on Criminal Justice concluded that guidance on the disclosure of unused material was unclear and might be unreasonable. It proposed a statutory regime covering both prosecution disclosure of unused material and defence disclosure. The then Government agreed with the Commission that a new statutory regime governing disclosure of unused prosecution material should be introduced and issued a consultation paper in May 1995. Legislation was enacted in the Criminal Procedure and Investigations Act 1996, which came into force in England and Wales on 1 April 1997. The position on used prosecution material remains unchanged.

396. In magistrates' courts the defence may, and in the Crown Court must, give details of the defence case to the prosecution in the form of a defence statement). Any disclosure to the prosecution must be within 14 days of the prosecution's primary disclosure. The prosecutor must then disclose any more "unused" material that might reasonably be expected to assist the defence as set out in the defence statement, and the defence may apply to the court for disclosure where the accused believes that relevant material has not been disclosed. The prosecution has a continuing duty, until the case is closed, to disclosed material as soon as possible.

397. The prosecutor can ask the court to order that sensitive material is not disclosed in the public interest and the defence ask the court to review a non-disclosure order. The prosecution may also seek to withhold material on public interest immunity grounds, and it is for the court alone to decide this, and its decision is not appealable. When considering such an application the court must weigh up the public interest in disclosure as against non-disclosure. Material disclosed under the Act which has not been displayed in open court is confidential, unless the court orders otherwise on application by the defence. Failure to keep material confidential is a contempt of court. A code of practice for police investigators has been issued under the Act, setting out their responsibilities for recording, preparing and retaining information.

Summoning of witnesses to give evidence or produce material

398. The Criminal Procedures and Investigations Act 1996 amended the witness summons procedure in the Crown Court. It provides for a witness summons to be issued on application to the court (which must be justified, specific and timely) and introduces an opportunity for a third party to be heard before the summons is issued. The aim is to reduce the amount of material to be considered for disclosure as the applicant must specify what evidence he is seeking and why. There will be more time to consider the request, as the application will have to be made at an earlier stage than at present. This provision was be implemented on 1 April 1999.

Hearsay evidence

399. The Government announced on 17 December 1998 that it had decided to accept all the recommendations of the Law Commission's report on hearsay evidence. More hearsay will be admissible, while the interests of the defendant will be protected.

400. The Criminal Justice (Terrorism and Conspiracy) Act 1998 allows as admissible the opinion of a senior police officer that the accused is a member of a proscribed and specified organisation, but stipulates that he cannot be convicted solely on officer's evidence, (or solely from inferences drawn from his silence). Corroboration is required to secure a conviction.

Evidence of previous misconduct

401. The previous Administration accepted the Royal Commission's recommendation that the law on admissibility of evidence about the defendant's previous convictions should be reviewed, and asked the Law Commission to do so. The Commission's report is expected early next year.

Appeals

402. The previous Administration agreed with the Royal Commission that the law in England and Wales on the Court of Appeal's powers to allow or dismiss an appeal should be clarified. The Criminal Appeal Act 1995 clarifies the evidential and procedural grounds on which the Court can quash unsafe convictions.

403. The Attorney General can refer to the Court of Appeal unduly lenient sentences passed in England and Wales for very serious offences, including most serious sexual and violent offences and serious fraud cases. (Criminal Justice Act 1988 as amended). By 2 February 1999, the sentence had been increased in 357 out the 498 cases referred. The Government intends to extend the Attorney General's powers of referral further.

404. The Criminal Procedure and Investigation Act 1996 enables the High Court to quash an acquittal of a person who is subsequently convicted of interfering with or intimidating a juror or witness in any proceedings which led to the acquittal, and the Court considers that there is a real possibility that this interference caused the acquittal. These provisions came into force in England and Wales on 15 April 1997.

405. Following the recommendation of the Stephen Lawrence Inquiry, the Government has asked the Law Commission to review the law on double jeopardy after acquittal. The Commission is expected to issue a consultation document in the Autumn.

Criminal Cases Review Commission

406. The previous Administration accepted the recommendation of the 1993 Report of the Royal Commission on Criminal Justice to establish an independent Criminal Cases Review Authority. The Criminal Appeal Act 1995 provided for what is in fact known as the Criminal Cases Review Commission. It was set up on 1 January 1997, and on 31 March 1997 took over the power formerly exercised by the Home Secretary in England and Wales to refer possible miscarriages of justice to the Court of Appeal. (This related to convictions on indictment; the Commission was also given power to refer summary convictions back to the Crown Court.) The Commission's remit extends to Northern Ireland (see paragraph 427) and a separate Commission has subsequently been set up for Scotland (see paragraph 438).

407. The Commission's powers, set out in the Criminal Appeal Act 1995, are to:

- Review, and supervise investigations into, possible miscarriages of justice in England, Wales and Northern Ireland;
- Approve the appointment of investigating officers;

- Gain access to documents and other material which may be relevant to its investigation; and
- Refer any case where it considers that there is a real possibility that a conviction or sentence would not be upheld – because of an argument, evidence, or information not raised in the proceedings hitherto – to the appropriate court, which must treat the referral as a new appeal.

408. By the end of March 1999, the Commission had received 2,416 applications. It had refused 751 of these, and referred 44 cases to the Court of Appeal. 459 cases were under review, and 1,162 were awaiting review. The Court of Appeal had, by 31 March 1999, heard 13 of the referred cases, in ten of which it had quashed the conviction or reduced the sentence, and in three upheld the conviction or sentence.

Compensation for wrongful conviction

409. Since 1994, the number of successful applications for compensation for wrongful conviction under section 133 of the Criminal Justice Act 1988 and the complementary *ex gratia* scheme have been as follows:

	section 133	**ex gratia**
1994	55*	0
1995	35*	4
1996	20	5
1997	22*	4
1998	48*	2

* Includes applications arising from the quashing of a large number of drink-driving convictions vitiated by forensic errors.

410. In the same period, compensation was paid under the Act in one case in Northern Ireland, and one in Scotland.

Reporting restrictions on juveniles in court

411. Under the criminal law in England and Wales, reporting restrictions apply in the youth court where a juvenile is charged with, or has been convicted of, a criminal offence. Youth courts do have the discretion to allow the identification of juveniles who have been charged with or convicted of a serious offence and are unlawfully at large, in order that they may be caught and returned to custody or brought before the court. The youth court may also dispense with reporting restrictions if to do so will avoid injustice to the juvenile in question. (Those juveniles charged with crimes of a serious nature who are committed to the Crown Court, and those who are charged along with an adult and who have their case heard in an adult magistrates' court are treated slightly differently. In these cases, it is left to the discretion of the court to decide whether to direct that the juveniles should not be identified by the media.)

412. The powers of the youth court to identify convicted juveniles were extended with the implementation of section 45 of the Crime (Sentences) Act 1997, which allowed the court the

discretion to identify juveniles who have been convicted of an offence, where the court decides in the light of the circumstances of the case that it is in the public interest to do so.

413. The current youth court reporting restrictions do not protect juveniles who are suspected of involvement in an offence, but have not yet been charged. The Youth Justice and Criminal Evidence Bill contains powers to address this situation as necessary by applying reporting restrictions to juveniles from the point of complaint, unless the court decides that such publicity will be in the public interest in the particular case.

Reducing delay between arrest and sentence for juveniles

414. The Government is reducing the delay in dealing with young, especially persistent young, offenders. Along with plans for maximum time limits for handling various stages of young offender cases except the trial itself, an administrative target has been set of 71 days from arrest to sentence for persistent young offenders.

Civil Legal Aid

415. The cost of lawyers' fees under the civil legal aid schemes has risen from £110.7 million in 1987-1988 to £634.0 million in 1997-98. Another £150 million per annum is spent by local and central government, charities and businesses on the voluntary advice schemes, including Citizens' Advice Bureaux, law centres and other centres. Under the Access to Justice Bill, currently before Parliament, the Government will set up a new body, the Legal Services Commission, which will establish a Community Legal Service, to co-ordinate these sources of legal advice. It will develop common systems, agreed by all funders, for defining and assessing needs and priorities, and for setting and monitoring standards of service.

416. The Government also wants to co-ordinate provision of basic information and advice with more specialised services. The Legal Services Commission will therefore manage the Community Legal Service fund, which will replace legal aid in civil and family cases. Unlike the current demand-led and lawyer-dominated civil legal aid scheme, the Community Legal Service will allow the Government to set priorities for funding and to give help to those people who need it most.

417. The White Paper *Modernising Justice*, published in December 1998, set out as priorities for funding helping people avoid social exclusion, cases of fundamental importance to the people affected, like those involving children's lives, and those with a wider public interest.

418. The reforms will rest on three pillars:

- Allocation of resources according to national and regional priorities;
- Contracts with service providers, who will give effect to the priorities, and help secure value for money for the customer and the taxpayer; and
- A funding code for the assessment of applications combining rigour and flexibility.

419. There will also be reforms to the rules so that those receiving public funds do not have an unfair advantage over those who are funding their case privately, and a wider range of services will be funded to help mediation of disputes before they reach court.

420. But it is also important to give those who do not qualify for legal aid better access to the courts. Conditional "no win, no fee" agreements will play an important part here.

Criminal legal aid

421. The Government intends to replace the criminal legal aid scheme with a new Criminal Defence Service which will be run, at least initially, by the Legal Services Commission (see paragraph 415 above) which will replace the Legal Aid Board. The Commission will contract out criminal defence services with quality requirements based on the Legal Aid Board's franchising scheme. But the scheme will go further as the Law Society is developing an accreditation scheme to ensure, for example, that solicitors have the necessary skills and experience. Very complex and expensive cases, where the trial is expected to last at least 25 days, will be covered by individual contracts with lawyers who are on a special panel and have demonstrated their ability to handle these cases. Anyone who needs advice at the police station or magistrates' court will be able to choose any accredited solicitor or salaried lawyer whose firm will normally continue to represent him or her throughout the lifetime of the case.

422. The courts will, under the Access to Justice Bill, grant representation solely according to the interests of justice, but once a case is over, the court will be able to order defendants to pay some or all of the costs of their defence if they have the means.

Non-civil procedures

423. In 1996 substantial changes were made to ensure that courts martial conformed with Article 14. The Government will make further changes to the disciplinary system of the Services when legislative time is available.

Northern Ireland

Time Limits

424. Between June 1992 and December 1998 an administrative scheme set targets for proceedings involving scheduled cases of 38 weeks from first remand to committal and 14 weeks from committal to arraignment. In November 1993, this was extended to non-scheduled cases and the limit was reduced to 11 months.

425. By September 1998, the time taken to complete scheduled cases had not fallen significantly owing to the volume of cases and the impact of new legislation such as the Police and Criminal Evidence Order 1989 and the Criminal Procedure and Investigations Act 1996.

426. Particular concern has arisen over the time taken to try cases in the magistrates' courts not covered by the administrative scheme. In August 1997, the Government's Cutting Review of Criminal Justice recommended case management to reduce delay. A Delay Group set out new administrative time limits for all stages of cases, and they came into force on 1 January 1999. The target time from remand to committal has now been reduced by 3 weeks for custody cases and by 6 weeks for non-custody cases. The judiciary will have as a target 6 weeks from committal to arraignment and 12 weeks from arraignment to start of trial.Targets for magistrates' courts of 12 weeks for the investigation to be completed, and a further period of 9 weeks from first appearance to disposal, have been introduced. In juvenile cases, the target for the period up to first appearance has been reduced to 7 weeks.

Royal Commission on Criminal Justice

427. The Secretary of State for Northern Ireland accepted the view of the Royal Commission on Criminal Justice that alleged miscarriages of justice should no longer rest with him but be sent to

the independent Criminal Cases Review Commission; and the Criminal Appeal Act 1995 provides for this.

Legal aid

428. In February 1998, the Government announced a review of the provision and administration of legal aid in Northern Ireland. As a result of the review, the Government published a consultation paper entitled *Public Benefit and the Public Purse*. The Consultation Paper proposes changes to the administrative arrangements for legal aid in Northern Ireland and the provision of legal services from the public purse.

429. The Paper also proposes a new body to administer legal aid, The Legal Services Commission. It is envisaged that the Commission would be responsible for managing the public funds allocated to purchase legal services for those who cannot afford them, and ensuring that priority needs are met.

Diplock Courts

430. Diplock Courts were introduced in Northern Ireland because of intimidation of jurors and the returning of perverse verdicts in terrorist cases. In Diplock courts, the judge sits without a jury, but all the principles of British justice have been maintained; trial is in open court with the cross-examining of witnesses; the onus is on the prosecution to prove guilt beyond reasonable doubt; and the accused has the right to legal advice, representation by a lawyer, and if eligible, legal aid. In addition, the judge must provide a written judgement outlining the reasons for any conviction. There is also an automatic right of appeal on points of law and fact to the Appeal Court which comprises three judges. There is no evidence that Diplock courts have led to perverse verdicts or a lowering of standards to the detriment of defendants.

431. The Government is committed to allowing jury trial for all offences as soon as possible. The Government agrees with Lord Lloyd, who led the Inquiry into Legislation Against Terrorism, that even with a lasting peace, terrorist-related offences committed during the campaign of violence would continue to come before the courts; and it mighty take some time to re-establish confidence in the jury system.

Access to legal advice

432. All suspects have a right to legal advice. Access may be delayed up to 48 hours and only as long as the police have a reasonable suspicion that allowing access to lawyers would prejudice the investigation. In 1996 only 13 out of 518 requests for access to legal advice were delayed. The figures for 1997 were 33 out of 512. In the first nine months of 1998, only four requests out of 526 were delayed.

433. In England and Wales, the practice is to permit solicitors to sit in on police interviews. In Northern Ireland requests are considered on merits. The consultation paper, *Legislation Against Terrorism*, published in December 1998, raised the question whether solicitors should bet allowed to attend routinely. The responses are being considered.

The Northern Ireland Act 1998 Tribunal

434. Before 1988, the Secretary of State's issue of a national security, public safety or public order certificate was conclusive evidence that an action was taken for the reasons stated in the certificate. In 1998, the United Kingdom was found in breach of Article 6 of the European

Convention on Human Rights, in connection with a certificate issued in fair employment proceedings. The Northern Ireland Act 1998 therefore set up a tribunal which may consider whether the action complained of was carried out for the reasons stated in the certificate, and whether it was justified.

Scotland

Appeal from Scottish criminal proceedings

435. Those found guilty of a criminal offence in a court consisting of a judge and jury (known as solemn procedure), may appeal against conviction or sentence or other disposal, or both (section 106 of the Criminal Procedure (Scotland) Act 1995). The accused cannot, however, appeal against any sentence fixed by law.

436. The Appeal Court may allow or dismiss an appeal in whole or in part. In the case of an appeal against sentence, the court may substitute any other sentence that could have been imposed in the lower court whether greater or less. In the case of an appeal against conviction, the court may:

- Affirm the verdict of the lower court;
- Set aside the verdict of the inferior court and quash the conviction or substitute an amended verdict of guilty; or
- Set aside the verdict and, if certain conditions are satisfied, grant authority to bring a new prosecution.

437. Those found guilty of a criminal offence in a court consisting of a judge sitting without a jury ("summary procedure") may also appeal against conviction or sentence or both. The grounds of appeal are the same as for jury trials but the procedure is different.

Miscarriages of justice in Scotland

438. From 1 April 1999, the independent Scottish Criminal Cases Review Commission took over the Secretary of State for Scotland's responsibility for referring alleged miscarriages of justice to the High Court. The Commission has functions and responsibilities similar to those of the Criminal Cases Review Commission for England, Wales and Northern Ireland.

Civil Legal Aid

439. In Scotland, the number of people receiving civil legal aid has shown modest reductions, but the average cost of cases continues to rise. The Government has issued a consultation paper, *Access to Justice beyond the year 2000*, and the implementation of any new proposals will be a matter for the Scottish Parliament.

Criminal Legal Aid

440. In Scotland, criminal legal aid is administered by the Scottish Legal Aid Board but can be granted by the Board or the Court. Legal aid is provided by the suspect's solicitor or a duty solicitor. All such solicitors must now be registered with the Board and comply with a published Code of Practice. The Government is piloting a Public Defence Solicitor employed by the State to

learn lessons on how this service can be provided. The average real cost of a summary case continues to rise and the Government will shortly introduce fixed payments.

Article 15 – Retrospective punishment

Confiscation: Drug Trafficking Offences Act 1986

441. On 9 February 1995, the European Court of Human Rights found that the United Kingdom had violated Article 7 of the European Convention on Human Rights, which prohibits, *inter alia*, the imposition of a penalty heavier than the one available when the criminal offence was committed.

442. It is a fundamental rule in the United Kingdom that no statute shall be construed to have a retrospective effect unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. The Drug Trafficking Offences Act 1986 made it clear that confiscation powers had to be applied in any case where criminal proceedings were instituted on or after commencement of the Act, regardless of when the offences in question took place. The relevant provisions of the 1986 Act came into force on 12 January 1987. The applicant, Peter Welch, was charged in 1987 and convicted in 1988 of drug trafficking offences committed in 1986. The court was therefore obliged to make a confiscation order against him under the 1986 Act.

443. The issue before the European Court whether the confiscation order constituted a criminal penalty for the purposes of Article 7 and, if so, whether it was a heavier one than was available in 1986. The principle underlying the 1986 Act was that a confiscation order under the Act was not a criminal penalty but a reparative and preventive measure. The Court disagreed, finding that in the circumstances of Mr Welch's case, certain elements in the confiscation order indicated that it amounted to a penalty; and that Mr Welch faced more far-reaching detriment as a result of the order that that to which he was exposed at the time of the commission of the offences.

444. The judgement has been implemented. Under the Drug Trafficking Act 1994, which came into force in 1995, a confiscation hearing is held only on the application of the prosecutor, or by the court of its own volition. Prosecutors have been advised not to mount a confiscation hearing when the offences were committed before 12 January 1987.

War crimes prosecutions

445. The War Crimes Act 1991 gives the courts jurisdiction over murder, manslaughter and culpable homicide committed as violations of the laws and customs of war during the Second World War in Germany or German-held territory by people who are now British citizens or resident in the UK, Channel Islands or the Isle of Man, whatever their nationality at the material time.

446. By June 1999, the Crown Prosecution Service and the London Metropolitan Police War Crimes Unit had considered 376 cases. 117 were not investigated because the suspects had died, one died before he could be tried, and in the remaining 256 cases there was insufficient evidence to warrant prosecutions. This leaves one case under investigation and one where an appeal has been lodged against a conviction.

Article 16 – Recognition as a person

447. There have been no changes to the law such as to affect enjoyment of this right.

Article 17 – Privacy

Data protection

448. The Data Protection Act 1984 was amended to make it an offence to procure without authorization personal data to which the Act applies, and to sell or offer them for sale. This provision came into force on 3 February 1995. The Data Protection Tribunal has heard some appeals by data users against the decisions of the Data Protection Registrar. The appeals concerned the use of personal data for direct marketing and they clarified the circumstances in which personal data are obtained fairly.

449. In October 1995 the European Union adopted a Directive setting out general rules for the protection of personal data, and in July 1998 Parliament gave effect to the Directive in the Data Protection Act 1998. The 1998 Act will strengthen the protection afforded by the 1984 Act. In particular it:

- Brings some manual records within data protection rules;
- Sets statutory conditions which must be met for personal data processing to take place;
- Sets tighter conditions for the processing of sensitive data – such as information about health and ethnic origin;
- Strengthens individuals' rights (e.g. by extending the scope for compensation for damage), and creates some new ones (e.g. a right to object to processing causing substantial damage or distress and an express right to prevent their data being used for direct marketing);
- Strengthens the powers of the supervisory authority (to be renamed the Data Protection Commissioner);
- Establishes new rules for the transfer of personal data to countries outside the European Economic Area; and
- Creates special arrangements for processing for journalistic, artistic or literary purposes.

The target for bringing the new law into force is 1 March 2000.

450. In December 1997, the European Union adopted a Directive setting out additional data protection rules for the telecommunications sector. They cover matters such as the retention period for personal data, the uses to which they may be put, the arrangements for calling line identification, and the inclusion of personal data in directories. Regulations giving effect in the UK to the Directive's rules for unsolicited marketing by telephone and fax came into force on 1 May 1999. Regulations giving effect to the remainder of the Directive will come into force with the 1998 Act.

Closed Circuit Television

451. Research shows massive public support for CCTV in the areas where it operates, that fear of crime is reduced, that crime levels fall, and that policing is more effective.

452. Those CCTV schemes that operate under Scottish Office funding in Scotland require robust privacy guidelines on the handling, storage, release and disposal of video tapes. Only the Chief Constable can authorise the release of footage Applicants are directed to data protection guidance on CCTV from the Data Protection Registrar.

Intrusive surveillance

453. Intrusive surveillance by the police and Customs and Excise was put on a statutory footing by Part III of the Police Act 1997 which came into force on 22 February 1999. It introduces safeguards and oversight by independent commissioners.

454. Entry on or interference with property, and interference with wireless telegraphy, by the police, the National Crime Squad, National Criminal Intelligence Service and Customs and Excise is not unlawful in certain strictly controlled circumstances. Chief officers can authorise only those actions likely to be of substantial value in the prevention or detection of serious crime which cannot reasonably be achieved by other means. Unless it is urgent, the prior approval of a commissioner will be required for any authorization involving a dwelling, hotel bedroom or office or where the action is likely to reveal matters subject to legal privilege, or confidential personal or journalistic material. Authorizations will be notified to a commissioner who can cancel or quash any which have been improperly given and order the destruction of any material obtained. Commissioners will also investigate complaints and can award compensation when complaints are upheld.

Other covert policing techniques

455. The Association of Chief Police Officers published codes of practice with minimum national standards for other covert techniques like the use of informants and undercover officers and surveillance that does not involve entry onto, or interference with property or wireless telegraphy, e.g. in public places or where there is no intrusion onto private land.

Security Service

456. From October 1996, the Security Service were empowered to support the police and other law enforcement agencies in the prevention and detection of serious crime (Security Service Act 1996, which came into force in October 1996).

Intelligence Services

457. In December 1994, the Secret Intelligence Service and the Government Communications Headquarters (GCHQ) were placed on a statutory basis by the Intelligence Services Act 1994.

Homosexuality

458. The Criminal Justice and Public Order Act 1994 reduced from 21 to 18 the age at which a person could lawfully consent to buggery and male homosexual acts. In 1999, Parliament again considered equalising the age of consent. The Sexual Offences (Amendment) Bill would have reduced the age at which a person may lawfully consent to buggery and certain male homosexual

acts from 18 to 16 years (17 in Northern Ireland). This would have made the age of consent for buggery and male homosexual acts the same as it is now for heterosexual and lesbian acts. The House of Lords rejected the Bill on 13 April 1999, but the Government is committed to bringing it back before Parliament.

Sado-masochism

459. In February 1997, the European Court of Human Rights ruled that the convictions of Laskey, Jaggard and Brown for assault during consensual sado-masochistic activities did not violate Article 8 (right to privacy) of the European Convention on Human Rights.

Article 18 – Freedom of thought, conscience and religion

Religious Education in Schools

460. Religious education (RE) is compulsory in all maintained schools in England. In most maintained schools it must be taught in accordance with locally agreed syllabuses that must "reflect the fact that the religious traditions in Great Britain are in the main Christian" while "taking account of the teaching and practices of the other principal religions represented in Great Britain". Syllabuses must not be designed to urge a particular religion or religious belief on pupils (Education Reform Act 1988). Parents have the right to withdraw their children from receiving RE if they wish to do so.

461. The Act also requires that pupils in county schools should take part in daily collective worship. This should be "wholly or mainly of a broadly Christian character" though pupils may be excused if their parents request it, and some or all may be exempted if it is inappropriate because of their religious backgrounds (School Standards and Framework Act 1998).

462. About a quarter of maintained schools in England have religious affiliations. These include voluntary aided, voluntary controlled and some grant maintained schools. Of these, almost all are affiliated to the Church of England or the Roman Catholic Church. The majority are voluntary aided and, along with grant maintained religious schools, offer denominational RE in accordance with the school's trust deed. Voluntary controlled schools, on the other hand, usually adopt the locally agreed RE syllabus.

463. In April 1999, there were 28 Jewish, two Muslim and one Seventh Day Adventist maintained schools in England. The Secretary of State for Education and Employment has approved three further proposals for Jewish schools which are yet to open, and is minded to approve proposals for two Sikh maintained schools. Other proposals from minority faiths are under consideration.

464. In Northern Ireland collective worship in state schools must not be distinctive of any particular denomination. A basic RE syllabus, on which each school can build, was approved by the four main churches and made compulsory for all pupils in grant-aided schools from September 1996.

Establishment of voluntary schools

465. Any person or voluntary body of any religious persuasion can set up an independent school or can make proposals for a new voluntary school to be maintained by the local education authority, even if the school is already an independent school. The Secretary of State for

Education and Employment considers all proposals against educational, organisational and financial criteria (section 41 of the Act).

466. Under the SSFA and from 1 September 1999, proposals will be decided by a local School Organisation Committee or, if it cannot reach a decision, by an adjudicator appointed by the Secretary of State. Committees and adjudicators must take guidance from the Secretary of State into account when considering proposals.

Religious Discrimination

467. Religious discrimination is discussed in paragraphs 74-83 under Articles 2 and 26.

Workers' practice of religion and religious dress

468. Through its Race Relations Employment Advisory Service, published guidance and its promotional programme, the Department for Education and Employment encourages employers to provide flexible working arrangements, including those made necessary by cultural and religious differences, and it promotes the message that diversity in the workplace helps businesses to succeed and prosper. Many employers respond to this positively.

Article 19 – Freedom of opinion and expression

469. The only restrictions in common law on the expression of opinion are where it is in contempt of court, blasphemous, seditious, defamatory, in breach of confidence or likely to provoke a breach of the peace. Any other restrictions on freedom of expression and the freedom to seek, receive and impart information result only from legal provisions enacted by or approved by Parliament in the public interest.

Obscenity

470. It is a criminal offence in England and Wales to publish any article which, in the view of the court, has a tendency to deprave and corrupt those likely to read, see or hear what is contained or embodied in it (Obscene Publications Act 1959). This is a test of harm, rather than mere offensiveness. The offence is subject to a maximum penalty of three years in prison and an unlimited fine. The Act contains a "public good" defence to protect material of genuine artistic merit.

471. The "deprave and corrupt" test has been the subject of much controversy, but attempts to change it have failed to gain support. The last attempt, in 1996, covering what a "reasonable person would find grossly offensive", produced no consensus. But the Government believes the Act is a strong and flexible means of regulation, applying to the Internet as much as to other media, and allowing for changes in society's moral standards.

Child Pornography

472. There are separate and more stringent controls on child pornography:

- The Protection of Children Act 1978 made it an offence for a person to take, publish, or possess with a view to distribution, indecent pictures of children under 16;

- The Criminal Justice Act 1988 made the mere possession of an indecent photograph of a child under 16 a criminal offence;

- The Criminal Justice and Public Order Act 1994 made offences in section 2 of the Obscene Publications Act and Section 1 of the Protection of Children Act 1978 serious arrestable offences. This gave the police a range of powers to deal with pornographers, and increased the maximum penalty for possession of indecent photographs of children from a fine to a possible six month prison sentence. The law was also extended to cover indecent images of children produced by computer graphics or stored on computer discs.

Film and Videos

473. Under the Cinemas Act 1985, local authorities license cinemas and can determine whether a film is shown in their area, impose restrictions on who may see it, or require cuts. Local authorities generally follow the certificate of the British Board of Film Classification (BBFC), but they are not bound by the Board's decisions. The BBFC considers the harm to viewers of the manner in which the film depicts subjects like sex and violence. If a cinema allows an underage child to view an unsuitable film, it may be liable to a maximum penalty of a £5,000 fine and loss of licence.

474. The Video Recordings Act 1984 requires the BBFC to classify all videos and computer games, apart from a small exempt category. It is a criminal offence to possess for supply, offer for supply or supply an unclassified video, or to supply a video to someone who is under age. The BBFC has to take into account the fact that home videos need to be classified more strictly than films for the cinema , where staff can exclude those who are under age. It also has to avoid classifying any work that would infringe the criminal law, particularly the law on obscenity. The Criminal Justice and Public Order Act 1994 requires the Board to have special regard to any harm that may be caused to viewers by the manner in which the video depicts criminal behaviour, illegal drugs, violence, horror or human sexual activity.

The Theatres Act 1968

475. Plays are subject to the general test of obscenity in the Obscene Publications Act 1959 and also have a "public good" defence. There are also controls in the Theatres Act 1968 on public performances involving the use of threatening, abusive or insulting words of behaviour that may stir up racial hatred or provoke a breach of the peace.

The Internet

476. The Internet is subject to the law on obscenity, and it is monitored by the Internet Watch Foundation (IWF), a self-regulatory body established in September 1996 by Internet service providers, with the support of the Government.The IWF established a "hotline" by which users can report child pornography "newsgroups" or websites. The Foundation sends details of material originating in the UK to the Metropolitan Police, and non-UK material via the National Criminal Intelligence Service to the relevant enforcement agency abroad.

Open Government

477. Open Government may assist Article 19 freedoms to seek, receive and impart information and ideas. But it is not required by Article 19, as the jurisprudence of the European Court on Article 10 of the ECHR makes clear.

478. The current policy on access to official information, based on the non-statutory *Code of Practice on Access to Government Information*, was described in the Fourth Periodic Report. The Code (which was revised with effect from 1 February 1997 (Appendix 40)) increases the amount of information volunteered by government. This includes the publication of facts and analysis backing major policy decisions, internal guidelines about government departments' dealings with the public, giving reasons for administrative decisions and providing information about public services.

479. Under the Code, the public may also ask to see any information held by a government body. Highly sensitive information, whose release would, for example, damage national security or law enforcement, may be withheld under the strictly defined criteria in the Code. Applicants can ask any body withholding information to review its decision and, if again unsuccessful, may complain through a Member of Parliament to the Parliamentary Commissioner for Administration who has extensive powers to see government papers, and reports his findings to Parliament. The Commissioner does not have power to order disclosure, but in practice his recommendations are followed.

480. A great deal of information has been made public for the first time, under the Code. Notable examples since 1994 include:

- Minutes of the monthly meetings between the Chancellor of the Exchequer and the Governor of the Bank of England;

- A full explanation of the scientific basis on which medical countermeasures to biological and chemical warfare agents were given to British troops in the Gulf, including reservations expressed at the time; and advice to Ministers between 1994 and 1996 on use of pesticide during the Gulf War;

- Information from British Archives on Nazi Gold and on monetary gold, non-monetary gold and the Tripartite Gold Commission;

- Guidance to Desk Officers on export licence and Arms Working Party applications and the criteria used in considering applications for the export of conventional arms; and

- Giving reasons for decisions to refuse applications for British Citizenship.

481. In addition, more historical government records have been opened before and after the thirty year closure period. Notable recent examples include:

- Papers on Britain and the Soviet Union between 1968 and 1972;

- The oldest documents held by the Home Office, dating from 1876-1914, relating to Irish political societies;

- The wartime Duke of Windsor papers;

- Unrestricted access to 83,550 World War II diaries; and

- Files from 1928 on Radcliffe Hall's banned publication *The Well of Loneliness*.

Freedom of Information

482. In December 1997, the Government published its proposals for giving the public right of access to public sector information in the White Paper, *Your Right to Know* (Appendix 41). Following consultation, the Government translated them into draft legislation. In May 1999, it published for public consultation and pre-legislative scrutiny, *Freedom of Information: Consultation on Draft Legislation*. When Government has taken account of the results of the consultation and recommendations from pre-legislative scrutiny, and as soon as the legislative timetable allows, it will introduce a Freedom of Information Bill.

483. The main features of the draft Bill are:

- A general right of access to information held by public authorities in the course of carrying out their public functions, subject to certain conditions and exemptions;
- A requirement on public authorities to consider the public interest, exercise any discretion they may have to disclose material which may otherwise be exempt;
- A duty on public authorities to adopt a scheme for the publication of information; and
- An office of Information Commissioner, and an Information Tribunal, with powers to enforce the rights created.

The Government has said that until the Code will remain in force until it is replaced by the Freedom of Information Act, and it will use the discretion available under the Code to disclose as much information as possible.

Broadcasting

484. The BBC's present Royal Charter was issued in May 1996 and expires on 31 December 2006. The Charter, with an Agreement between the BBC and the Secretary of State of January 1996, provide for the continuation of the BBC as the major public service broadcasters in the United Kingdom. Among the objectives identified for the BBC's public service activities are the maintenance of independence in its editorial decisions and proper accountability to its audiences. The BBC continues to be under an obligation, as are other broadcasters, to present news and programmes dealing with matters of public policy or of political or industrial controversy with accuracy and due impartiality.

Press

485. In July 1995, the previous Administration responded to the recommendations of the Select Committee and of Sir David Calcutt on press regulation and self-regulation (paragraph 317 of the Fourth Report refers) with a paper, *Privacy and Media Intrusion*. It concluded that:

- Self-regulation of the press under the non-statutory Press Complaints Commission was much to be preferred to statutory regulation in the form of an ombudsman or tribunal;
- Public consultation had shown that there was insufficient support for a civil wrong of privacy infringement; and

- It had been unable to find a workable formulation for a criminal offence of intrusion which at once protected responsible investigative journalism and legitimate claims to personal privacy.

486. The Government has given its support to the self-regulatory system overseen by the Press Complaints Commission, while making it clear that it would like to see further improvements.

487. The Human Rights Act 1998 requires the court to pay particular regard to the right to freedom of expression when granting relief in proceedings relating to journalistic, literary or artistic material. The Data Protection Act 1998 provides an exemption from most of the data protection rules for personal data processed with a view to the publication of journalistic, literary or artistic material in certain circumstances. The 1998 Act expressly recognises the special importance of the public interest in freedom of expression. The target date for implementing the Act is 1 March 2000.

488. Journalists' sources are protected under section 10 of the Contempt of Court Act 1981, subject to some exemptions.

Official Secrets Act

489. The Official Secrets Act 1989 protects only a very narrow range of information whose disclosure is likely to be damaging. There are no plans to repeal the Act since that would risk allowing disclosure which might harm the national interest.

Article 20 – War propaganda

Incitement to Racial Hatred

490. The UK has traditionally allowed people to make known views with which most others may well disagree, and many may find distasteful or even offensive, provided the views are not expressed violently or do not incite violence or hatred against others.

491. Legislation already prohibits conduct which is intended to stir up or incite racial hatred in Great Britain (Part III of the Public Order Act 1986). This covers words or behaviour, and broadly catches the dissemination, or possession with a view to dissemination, of material in order to incite racial hatred.

492. An offence of intentionally causing harassment, alarm or distress, with an immediate power of arrest, and maximum penalties of six months imprisonment and/or £5,000 fine, was introduced by the Criminal Justice and Public Order Act 1994. This helps the police deal more effectively with serious, especially persistent, racial harassment. Section 19 of the Public Order Act 1986, dealing with the publication and distribution of racially inflammatory material, was reclassified as an arrestable offence.

493. The Crime and Disorder Act 1998 introduced new "racially aggravated" offences where there is evidence of racist motivation or hostility. They came into effect on 30 September 1998 (see paragraph 33).

494. The recommendation of the Stephen Lawrence Inquiry Report that the Government should consider amending the law to create offences involving racist language or behaviour, and of

offences involving offensive weapons in other than a public place, is discussed under paragraph 35 above.

495. In Northern Ireland, there has been one prosecution for incitement to racial hatred under the Public Order (Northern Ireland) Order 1987.

Article 21 – Right of peaceful assembly

Public Order

496. The Criminal Justice and Public Order Act 1994, which received Royal Assent in November 1994, is described in Paragraphs 382 to 387 of the Fourth Periodic Report. The Act provides the police with powers to:

- Prevent the arrival of large numbers of people at "raves" (broadly, large-scale and noisy night-time parties) and direct people to leave before or during a rave. The Act defines raves; and events which are held inside or during the day, and which are properly organised and licensed, are not affected;
- Direct two there are aggravating factors like damage, or abusive language or behaviour, or if six or more vehicles are brought onto the land; and to arrest without warrant if an officer reasonably believes the offence is being committed; and
- Stop and search persons and vehicles in anticipation of violence; the Knives Act 1997 allows searching of the police reasonably believe are carrying dangerous instruments or offensive weapons.

497. Since 1 March 1999, a police officer can require the removal of, or seize, any item which he reasonably believes a person is wearing or intends to wear wholly or mainly to conceal his identity (section 25 of the Crime and Disorder Act 1998). These powers will be used when serious violence or public disorder is anticipated.

Northern Ireland

Parades

498. A review of the handling of parades in Northern Ireland, commissioned by the previous Administration, found that the statutory criteria had been applied in such a way that public order considerations predominated. Inadequate (or no) account was taken of the impact of parades on community relationships.

499. The Government accepted its recommendations and the Public Processions (Northern Ireland) Act 1998 put them into effect. The Act:

- Gives an opportunity for opponents of parades to make their views known;
- Encourages mutual understanding about parades, and stimulates successful mediation;

- Provides criteria, when mediation fails, for assessing the impact of parades on community relationships; and

- Establishes a Parades Commission make decisions according to these criteria and to promote mediation.

Since the Commission assumed its full powers, it has found it necessary to restrict routes of only 104 of the 3,250 parades notified to it.

Article 22 – Freedom of association

Trade Unions

500. On 31 December 1998, there were 224 trade unions listed under the voluntary scheme. In 1997, total listed union membership was about 7.8 million, which represented about 29 per cent of the working population.

501. In June 1998, the Government repealed burdensome aspects of the law on the deduction of trade union subscriptions from pay at source introduced in the Trade Union Reform and Employment Rights Act 1993, which had been criticised by the Trades Union Congress as infringing ILO Convention 87.

502. The Employment Relations Bill, which gives effect to the White Paper on Fairness at Work, creates a framework of rights and responsibilities including:

- A statutory procedure for trade union recognition where a majority of the relevant workforce wishes it;

- A right to be accompanied by a fellow employee or union representative during disciplinary or grievance procedures;

- Protection against unfair dismissal of employees taking part in lawfully organised official strikes; and

- Rights to develop family-friendly employment.

The Government hopes that the Bill will receive Royal Assent by the summer.

503. It is unlawful for an employer to refuse to employ, dismiss or discriminate against anyone because he or she is, or is not, a member of a trade union (Trade Union and Labour Relations (Consolidation) Act 1992). The Employment Relations Bill includes powers and procedures to reinforce workers' rights in these ways:

- It contains a power to prohibit the compilation of "blacklists" for use by potential employers or employment agencies to who wish to deny employment to present or former trade union activists. (The lack of protection from blacklisting has been repeatedly criticised by the ILO.);

- It prohibits discrimination by omission on grounds of trade union membership or activities, or non-membership. Discrimination by, for example, giving a benefit to only to union members or only to non-union members does not constitute action short of dismissal on grounds related to trade union membership under section 146 of the 1992 Act. The Bill makes clear that "action" in section 146 of the 1992 Act includes omission to act; and

- It protects workers who are sacked or blocked for promotion for refusing to opt-out of a collective agreement. If a union obtains statutory recognition, then any terms it negotiates will normally be incorporated, expressly or by custom and practice, into all workers' contracts. Under the Bill, workers will retain the right to opt out of these collective agreements or to retain the terms of the agreements in their contracts. They will be protected against dismissal or detriment for refusing to sign individualised contracts.

ILO Convention No. 87

504. In October 1998, the Government responded to the observations of the ILO on the UK's compliance with ILO Convention 87 (on the Freedom of Association and Protection of the Right to Organise). In November, the Trades Union Congress commented on the Government's response, welcoming the restoration of trade union rights but stating that provisions of the Trade Union Reform and Employment Rights Act 1993 on unjustifiable discipline and the right not to be excluded or expelled from a union. The Government disagrees and considers that UK law complies with the Convention.

Industrial relations at the Government Communications Headquarters (GCHQ)

505. One of the first acts of the new Government was to restore to the employees of GCHQ in Cheltenham the right to belong to any trade union of their choice. The Staff Federation has become a group of the Public and Commercial Services Union.

506. On 3 September 1997, under a legally binding collective agreement, the Group was recognised for consultation and negotiation on matters exclusive to GCHQ, and other Civil Service Unions for service-wide matters and for representation of individual members. Under the agreement, the unions have agreed not to take any industrial action that would disrupt GCHQ operations, and they have unilateral right of access to binding arbitration if a dispute is unresolved.

507. The Foreign Secretary has revoked the remaining restrictions on access to industrial tribunals, thereby restoring to GCHQ employees the last of the protections which they had been denied. On 9 September 1997, the first of those who were dismissed for continuing union membership returned to work at GCHQ.

Industrial Relations in the Prison Service

508. Industrial relations in the Prison Service were put on a proper footing by the Criminal Justice and Public Order Act 1994 which:

- Applies employment rights of other Crown employees to prison officers;

- Gives prison officers' bodies the status and immunities of trade unions;

- Maintains the position that it is unlawful to induce prison officers to take industrial action; and

- Provides a new mechanism to resolve disputes about, and to determine, pay and related conditions.

509. Industrial action by key prison staff serious disruption to the criminal justice system. This affects the lives of prisoners and their families adversely and can undermine good order and security in prisons. If the prison service trade unions accept a voluntary contractual agreement not to induce or take disruptive industrial action, the Government will consider changing the 1994 Act. Discussions with Prison Service trade unions are continuing.

Terrorist organisations

510. There have been no prosecutions in England and Wales for membership of a proscribed organisation and no other organisations have been proscribed.

Article 23 – Family and marriage

Supporting families

511. On 4 November 1998, the Government published a consultation document, *Supporting Families*, with its strategy to increase the support and help available to families. The paper concentrates on:

- Providing better support to parents;
- Improving family prosperity;
- Helping families balance work and home;
- Strengthening marriage and adult relationships; and
- Reducing serious family problems.

The paper included proposals for a new family and parenting institute, a new national parent helpline and an expanded role for health visitors.

512. On 8 June 1999, the Government published a summary of the responses to the consultation exercise. Work is now being taken forward on several of the proposals in *Supporting Families*. The National Family and Parenting Institute has been set up and will map the services available to parents and couples and advise on gaps. It will work with other. A grant has been made to develop the national telephone helpline service provided by Parentline. A £7 million grant scheme has been set for 3 years for voluntary organisations who provide family and parent support services.

513. The Government recently issued a leaflet, *Helping the Family in Scotland*, outlining its policies affecting the family in Scotland.

Taxation

514. The allowance for married couples under 65 on 5 April 2000 will largely be abolished from April 2001, as part of tax and benefit reforms. From April 2000, a new relief, the children's tax credit, will available to individuals and couples with one or more children under 16

living with them. It will reduce income tax liability by up to £416 a year, but will be progressively withdrawn from claimants paying higher rate tax.

Marriage

515. In English law, marriage is defined as a voluntary union of a man and a woman to the exclusion of all others, and it is void if the parties are not male and female respectively. The Government recognises that this may be less than satisfactory for those of the same sex in long-standing relationships, but it has no plans to introduce legislation to permit same-sex marriages.

Equality between spouses

516. The Welfare Reform and Pensions Bill, which is now in Parliament, will introduce provisions which will allow pension-sharing orders to be granted. These will allow the courts to create a new pension for a non-member spouse out of the member spouse's pension. The intention is to implement pension-sharing before the end of 2000, subject to progress with the legislation. In the interests of legal certainty, pension-sharing will not be possible for couples who have divorced before this time. Primary legislation will also be required to amend three statutory and common law rules of family law which do not conform with Article 5 of Protocol 7 to the European Convention on Human Rights.

Divorce

517. The Government's policy objective is that the institution of marriage should be supported and that where a marriage has broken down irretrievably and is being brought to an end, this should be done so as to minimise stress to the parties and any children involved. Disputes should be dealt with in such a way as to maintain as good a relationship between the parties and any children involved as is possible under the circumstances. Part III of the Family Law Act 1996, which provides for publicly funded mediation in family disputes, is being implemented area by area. It is intended that quality-assured mediation will be available in all parts of England and Wales in early 2000.

518. In Scotland, the Scottish Executive is considering whether changes for the grounds of divorce are needed, and the operation of the law in practice.

Transsexual people

519. On 14 April 1999, the Home Secretary announced the setting up on an inter-departmental Working Group on Transsexual People with terms of reference:

> *to consider, with particular reference to birth certificates, the need for appropriate legal measures to address the problems experienced by transsexual people, having due regard to scientific and societal developments, and measures taken in other countries to deal with this issue.*

520. The Working Group has invited representations, and has been asked to report by Easter 2000. It has Scottish representation, and any legislation on devolved matters in Scotland would be for the new Scottish Parliament.

Family unity

521. It is the Government's policy to preserve family unity. The UK makes a family reunion concession for those recognised as refugees, and usual maintenance and accommodation criteria are waived. Those who have been refused asylum but allowed to remain on an exceptional basis may apply for family reunion after four years, when they will be required to show that they are able to accommodate and maintain their relatives without recourse to public funds. The concession applies to the spouse and minor children who were part of the family before the sponsor sought refuge or asylum. Other members of the family may be allowed to come in compelling compassionate circumstances (see also paragraphs 349 and 562-570).

522. Presence of family members in the United Kingdom is taken into account in deportation decisions. It is normal practice to offer to pay for the spouse and any children of a deported person, who are not themselves subject to deportation action, to accompany the person abroad. Where the whole family is being deported, they will usually be given an opportunity to report for removal of their own accord and it is only if they fail to do so that detention will be considered.

523. Where children are involved, any detention will be delayed until as close to removal as possible and every measure is taken to ensure that family groups are not detained for more than a few days. Unaccompanied children will not normally be removed unless suitable reception arrangements can be made in the country concerned. Where this is not possible, the child will normally be allowed to stay on compassionate grounds.

524. Local authorities are under a statutory duty to give support to children accompanying asylum-seekers, though the Immigration and Asylum Bill proposes that the Home Office should in future support destitute asylum-seeking families. These children are entitled to education, and families to healthcare.

Article 24 – Rights of children

UN Convention on the Rights of the Child

525. The Convention on the Rights of the Child (CRC) entered into force for the United Kingdom in January 1992. The UK submitted its First Periodic report in February 1994 and was examined on it in January 1995. The Second Periodic report has recently been submitted.

Child Protection

526. The Government is firmly committed to ensuring that children are protected from abuse and neglect. The Children Act 1989 was designed to promote decisive action to this end.

527. A solid foundation for co-operation between agencies – social services, health, education, the police, probation and the voluntary sector – which is an essential prerequisite for child protection work, was laid by the Government guidance *Working Together Under The Children Act 1989* issued in 1991 (Appendix 42). A consultation paper issued by the Department of Health in February 1998 revisited the general issues of inter-agency co-operation and revised guidance on this will be issued later in 1999.

528. In 1995 the Government published a report with key messages from a major programme of research into child protection (Appendix 43). A major lesson was the importance of focusing not merely on alleged incidents of abuse but on the wider needs of children, particularly the most

vulnerable, and their families. Families need into abuse. The Government is considering how this might best be assessed.

529. Following consultation with organisations and individuals interested in services for children, including children themselves, the Government intends to issue fresh guidance on child protection and the assessment of children in need and their families.

Review of the Safeguards for Children Living Away from Home

530. In 1996, with revelations of abuse in children's homes and other paedophile activity in foster care, the Government commissioned Sir William Utting to assess whether the safeguards were adequate to protect children and whether they were properly enforced. The Government published Sir William's report in November 1997 (summary at Appendix 44). His recommendations cover many issues including:

- Regulation and quality of service;
- Education and health care;
- The suitability of people recruited to work with children;
- The prosecution of alleged child abusers; and
- The protection of children in custody.

531. The Secretary of State for Health announced that he would chair a task force, comprising ministers from all the relevant Departments and a small number of expert advisers from outside Government, to prepare costed responses to the report's principal recommendations and monitor progress on their implementation.

532. The Government's Response to the Children's Safeguards Review was published on 5 November 1998 (Appendix 45). It set out a full programme of management and other changes designed to ensure that, in future, all children living away from home are looked after properly and get a decent start in life.

533. The Secretary of State for Health launched this three-year programme, "Quality Protects", in September 1998. It sets out new national objectives for children's services, new guidance for all local councillors and a new requirement on local authorities to submit action plans to the Department of Health (which all have done).

534. The programme also prescribes a new children's services grant of £375 million over three years. This is intended to:

- Increase the choice of foster and residential care placements for children;
- Prevent inappropriate discharge of young people at 16 and 17;
- Increase support for those leaving care; and
- Improve the management of children's personal social services, including quality assurance systems.

Preventing unsuitable people from working with children

535. The main report of an inter-departmental working group on preventing sex offenders from working with children was made public in January 1999. It recommended:

- The establishment of a new integrated system for identifying unsuitable individuals;
- A possible new criminal offence of applying for, accepting or continuing work with children when identified as unsuitable under this system; and
- a central point of access to the integrated system for checking purposes.

536. The working group had also recommended it should be a criminal offence for a person aged 18 or over to engage in any sexual activity with or directed towards a person under that age if the older person is in a position of trust in relation to the younger in specified circumstances. The Sexual Offences (Amendment) Bill, introduced to Parliament in December 1998, included this and would have applied the notification requirements of the Sex Offenders Act 1997 to those convicted of the offence. The Bill was rejected by the House of Lords in April 1999 but the Government is committed to reintroducing it.

Social Services White Paper

537. Underpinning the Government's agenda on services for children are the changes announced in the White Paper *Modernising Social Services: Promoting Independence, Improving Protection, Raising Standards* published in November 1998. In this, the Government set out its programme of action for children over the next few years. Subject to the need for legislation, the Government expects all changes and reforms affecting children to be implemented by 2001-2002.

Health Select Committee's Second Report on Children Looked After by Local Authorities

538. This was published in July 1998. The report complemented the Children's Safeguards Review but concentrated on ways in which the Committee felt that the care system was failing children. The Committee made recommendations for improved service provision. The Government accepted most of these in its response published in December 1998 (Appendix 46).

Placement of children with persons who might put them at risk

539. The Children (Protection from Offenders) (Miscellaneous Amendments) Regulations were introduced in September 1997. These prohibit the approval, by adoption agencies, local authorities or voluntary organisations acting as responsible authorities, of any person as a foster carer or adoptive parent where either that person or any adult member of that person's household over the age of 18 years is known to have been convicted of, or cautioned for, a specified offence.

540. Specified offences include offences, other than common assault and battery, in Schedule 1 to the Children and Young Persons Act 1933, Schedule 1 of the Sexual Offences Act 1956 (rape), section 1 of the Protection of Children Act 1978 and section 160 of the Criminal Justice Act 1988 (offences relating to indecent photographs of children). These offences are now included in the Schedule to the Disqualification for Caring for Children Regulations 1991.

Parenting

541. In 1995 the Department of Health launched a package of materials in England entitled *Looking After Children: Good Parenting, Good Outcomes* (the LAC materials). The LAC materials were piloted in Scotland in 1997-1998. They help engage children in their own care plans and encourage communication between all those involved in a child's care. Most local authorities in both countries have committed themselves to implementing the ideas contained in the LAC materials. In Wales, the LAC materials were produced in Welsh and English and used under guidance related to the implementation of the recommendations of the North Wales Child Care Examination Team.

United Kingdom participation in international agreements

542. The United Kingdom has played a crucial role in international fora such as the Stockholm World Congress Against the Commercial Sexual Exploitation of Children and programmes such as Joint Action on Combating Child Sex Exploitation and the Sexual Trafficking of Persons (STOP).

543. In August 1997 the UK and the Philippines signed a memorandum of understanding on co-operation to combat the sexual exploitation of children. They then sponsored a major new initiative to develop dialogue between Europe and Asia on child welfare issues and share good practice and information The initiative was announced at the Asia – Europe Meeting (ASEM 2) in April 1998. It covers action in areas such as prevention of and protection from sexual abuse, tackling transnational crime, the recovery and rehabilitation of victims.

544. A preliminary meeting of the countries concerned was held in Manila in June 1998 to prepare for a meeting of experts from Governments and non-governmental organisations in London in October 1998. It was agreed that there should be a follow-up meeting of police and law enforcement agencies to strengthen links for the prevention of cross-border sexual crimes involving children and the co-ordination of international action to prosecute child sex offenders. It was also agreed that an ASEM Resource Centre website should be set up to provide information on child protection legislation in member countries, relevant programmes under way and their relationship to other regional and international initiatives.

545. The Government announced in October 1998 that the UK was stepping up action to deal with the commercial sexual exploitation of children and, in accordance with its obligation as a signatory to the Stockholm World Congress would be developing a national plan for this.

546. The National Criminal Intelligence Service (NCIS) has developed a database of people involved in or connected with paedophilia and child pornography. NCIS provides assistance to a variety of national and international agencies and has contributed to the work of the Interpol Standing Working Party on Offences Against Minors which co-ordinates action to combat sex tourism. There have been a number of successful police operations against child pornography, including on the Internet, and some of these have involved international cooperation. Several UK police forces have run training courses in the Philippines, Thailand and Sri Lanka to develop expertise and share good practice.

Social care initiatives relevant to sexual abuse of children

547. The Government's revised guidance on inter-agency co-operation to protect children (see paragraph 527) will include specific mention of the needs of children involved in prostitution.

Child Prostitution

548. Charities have highlighted the nature and extent of child prostitution in England. The Government is very concerned about it and is committed to deter those who sexually abuse and exploit children. There is comprehensive legislation in place to punish with those who commit sex offences against children.

549. In December 1998 the Government issued draft guidance (Appendix 47) on how to recognise the problem of children caught up in prostitution and how to deal with it. It builds on police guidelines piloted successfully in two force areas. The guidance states that children in prostitution are predominantly abused children and that those adults who take advantage of them are child abusers. It encourages the use of the full range of criminal sanctions available against those who corrupt and abuse children. It aims to enable all agencies, including police and social services, to work together to safeguard children and help them to escape from prostitution.

550. A child over 10 may in theory be charged with offences of loitering and soliciting for the purposes of prostitution on the street. The Government has no plans to change the law on loitering and soliciting so that children can never be prosecuted. The criminal law is an important part of the Government's strategy to prevent children from entering prostitution and to deter them from continuing that way of life.

Child witnesses

551. The Criminal Justice Acts of 1988 and 1991 admitted testimony by child witnesses through live television links and video-recorded interviews as evidence-in-chief in cases involving sex offences and offences of violence, cruelty and neglect. In 1994, an interdepartmental Steering Group on Child Evidence was established to monitor the implementation of these provisions, oversee their evaluation and resolve any issues arising. The Group comprises police as well as officials. Since 1997 arrangements have been made for NGOs working with child witnesses to participate in regular meetings with the Steering Group.

552. Members of the Steering Group have been involved in several projects in collaboration with NGOs. A good practice video for the judiciary and legal profession, *A Case for Balance*, was issued in January 1997 by the National Society for the Prevention of Cruelty to Children (NSPCC) and partly funded by Government. The *Child Witness Pack*, produced to assist the preparation of child witnesses for court, was revised and re-launched by the NSPCC as *The Young Witness Pack*, also with Government financial support, in June 1998. In February 1999 the Crown Prosecution Service put out to consultation guidance on the provision of pre-trial therapy for child witnesses.

553. The Government is determined to ensure that children and other vulnerable witnesses can give their best evidence with the minimum of distress and that court practices should be adapted to afford greater protection to children without undermining the defendant's right to a fair trial. In June 1998 the Government published for consultation *Speaking Up For Justice*, the report of an interdepartmental working group on vulnerable or intimidated witnesses (see paragraph 121 and Appendix 30). It highlighted the need for all those involved in the criminal justice system to be trained to help them respond to the needs of vulnerable witnesses.

554. The report proposed among other things:

- Video-recorded pre-trial cross-examination;

- Allowing the witness to use an intermediary where necessary;
- Screens round the witness box to shield the witness from viewing the defendant;
- Clearing the public gallery, in sexual offence cases and cases involving intimidation, to enable evidence to be given in private; and
- The wearing of ordinary dress in court.

555. Several of the report's recommendations relating to children have been incorporated in the Youth Justice and Criminal Evidence Bill currently before Parliament and expected to receive Royal Assent by autumn 1999. These include:

- Making the existing child evidence measures (video statements and live TV links) together with the new measures proposed in the report available to all witnesses under 17;
- Extending the range of cases in which defendants may not personally cross-examine child witnesses; and
- Restricting the circumstance in which information about the previous sexual history of alleged victims may be sought or presented as evidence in trials for sexual offences.

556. An interdepartmental Steering Group is taking forward the implementation of the recommendations in *Speaking Up For Justice*.

Young Offenders

Child safety order

557. The child safety order is one of the elements of the Government's youth justice reform programme intended to allow early intervention to prevent or check the onset of offending behaviour by children under the age of 10. Supplementing measures under the Children Act 1989, it is a welfare provision available to local authority social services departments following application to a family proceedings court. It will normally place the child under the supervision of a local authority social worker and expect him to comply with requirements of the court intended to secure his care or protection or prevent the sort of behaviour which places him at risk of offending.

Local child curfew

558. The local child curfew is intended to protect young children who may be at risk of offending as a result of being out on their own late at night. The support of the police and the local community will be crucial to the success of the measure.

559. The local authority is empowered to impose a curfew following appropriate consultation and with the agreement of the Home Secretary. Schemes submitted for his approval must specify the nature of consultation arrangements and how people are to be made aware of the curfew notice. Renewed consultation is required if the authority seeks the Home Secretary's approval to extend the curfew beyond 90 days.

Referral order

560. The Youth Justice and Criminal Evidence Bill currently before Parliament provides for a new disposal, the referral order, designed to ensure early intervention which involves the young offender in preventing re-offending. It will be the primary sentence for young offenders appearing in the youth court for the first time and pleading guilty.

561. The young person will be referred to a youth offender panel, comprising people from the local community with an interest or expertise in dealing with young people, and a member of the local youth offending team. The panel will seek to work with the young offender and his family and, where appropriate, the victim, to identify the causes of the offending behaviour. It will draw up a contract with the young person specifying agreed activities to tackle the and deal with any child welfare concerns. The contract might include a requirement to participate in family counselling sessions, attend drug rehabilitation courses or stay away from specified people or places. The case would go back to the court only if a contract was refused or its conditions breached.

Refugee Children

562. The UK has retained, for the avoidance of any doubt, its reservation that nothing in the UNCRC is to be interpreted as affecting the operation of its immigration and nationality legislation. It nevertheless believes that that legislation is entirely consistent with the UNCRC.

563. Paragraph 423 of the Fourth Periodic Report set out the provisions relating to unaccompanied children, and the matter is also dealt with under paragraph 348. The Government fully appreciates the potential vulnerability of unaccompanied children and the distress they may experience while awaiting a decision on their asylum claims. It is for this reason that particular priority and care are given to the handling of these cases and close attention paid to the training of caseworkers.

564. The number of unaccompanied children claiming asylum in the UK rose from 633 in 1996 to 1,105 in 1997 and 2,833 in 1998. All asylum claims made in the UK, including those from unaccompanied children, are assessed against the criteria set out in the 1951 UN Convention relating to the Status of Refugees.

565. In accordance with the Immigration Rules, a child will not be interviewed about the substance of his claim if the necessary information can be obtained from written enquiries. If an interview is considered necessary, it will be conducted by a specially trained officer in the presence of a parent, guardian, representative or other adult who, for the time being, takes responsibility for the child.

566. All unaccompanied children who apply for asylum in the UK are automatically referred to a panel of advisers, funded by the Government but administered by the Refugee Council. The panel advises the child in his dealings with public bodies while his claim is being considered.

567. Unaccompanied children will normally be allowed to remain in the UK exceptionally, outside the Immigration Rules, on compassionate grounds. No unaccompanied child may be removed unless adequate reception can be arranged abroad.

568. It is not normal policy to detain any asylum seeker who is clearly under the age of 18. Detention may be considered if there are reasonable grounds for believing that an applicant has reached that age. Age assessment is necessarily inexact in the absence of documentary proof but

appropriate consideration is given to a doctor's or paediatrician's report and the benefit of the doubt is given whenever possible.

569. The Immigration and Asylum Bill currently before Parliament would amend section 17 of the Children Act 1989 to relieve local authorities of their responsibility to accommodate and fund families of asylum seekers who would otherwise be destitute. This responsibility would be transferred to the Home Office. The change would not affect the duty of local authorities to provide the same level of protection, education and health care to children of asylum seekers as to other children.

570. Provision for unaccompanied asylum-seeking children in the UK will continue to be made under the Children Act 1989 and the Children (Scotland) Act 1995.

Employment of children

571. The UK has implemented the European Community (EC) Directives on the protection of young people at work and on the organisation of working time. It is now able to withdraw its reservation under article 32 of the UNCRC.

Diana Children's Community Nursing Teams

572. In commemoration of the life of Diana, Princess of Wales, and building on a pilot project which ran from 1992 to 1997, a network of children's nursing teams is being set up to work in the community and specialise in supporting children with life-threatening or life-limiting illnesses and their families.

573. Additional funding of £2 million per year has been made available to Health Departments for three years from 1 April 1999 to establish teams within the UK.

Under eights/day care

574. In April 1998 responsibility for children's day care under the Children Act 1989 transferred from the Department of Health (DH) to the Department for Education and Employment (DfEE). This followed the issue in March 1998 of a DH/DfEE joint consultation document on the regulation of early education and day care. The document outlined the two existing systems of regulation, under Education Acts and the Children Act, and explained the Government's wish to see a more streamlined regulatory regime. Reform to strengthen the safeguards for the care of children since July 1998 has included:

- The issue of a circular to all local authorities on good practice in the registration and inspection of childminders;

- The issue of guidance to parents wishing to employ a nanny to look after children in the family home;

- Consultation on a voluntary Code of Practice for nanny agencies; and

- Preparation for the establishment of a Criminal Records Bureau which would make it easier to carry out police checks on people who want to work with children.

Further proposals will be announced later in 1999.

575. The Government aims to improve the quality, affordability and accessibility of childcare nationwide. It has set aside £470 million for childcare, including £170 million from the New Opportunities Fund. In addition, £452 million is being invested in the Sure Start Strategy which seeks to bring together family support, health, childcare and early education services for families and children from the very beginning of a child's life.

Scotland

The Children (Scotland) Act 1995

576. This Act defines parental responsibilities as well as rights in relation to children. It also sets out the duties and powers available to public authorities to support children and their families and to intervene when the child's welfare requires it. The Act requires that the child's views be taken into account where major decisions are to be made about his future; and that his welfare be the paramount consideration in any decision being made about him by courts and children's hearings.

Adoption

577. The Children (Scotland) Act 1995 requires among other things that:

- Adoption applications contested by the birth parents be brought before the court;
- Within 6 months; and that the court draw up a timetable for resolving the application without undue delay;
- A children's hearing be able to give advice to a court on an adoption application where it has been involved with the child concerned;
- Local authorities apply to the court for a Parental Responsibilities Order instead of simply assuming parental rights over older children for whom adoption is not a suitable form of long term care; and
- Where a child is freed for adoption, parenthood remains with the birth parents until the adoption take effect.

Children's Services Plans

578. Local authorities in Scotland are now obliged to produce a plan for the provision of services to children. In drawing up these plans they must consult Health Boards, NHS Trusts, voluntary organisations representing the views of those using or likely to use the services, reporters to and representatives of the Children's Panel, and housing agencies.

Care Plans

579. All children who are looked after by a local authority must now have individual care plans. These should identify their health and education needs, set out what is to be done to address those needs by all parties including the child, the parents and the local authority, and arrange to review progress regularly.

Minister for Children's Issues

580. A Minister for Children's Issues in Scotland was appointed in July 1997. He is responsible for ensuring that the needs of the child are paramount when decisions that affect them are being made. There is a central point within the Scottish Office to which representations on children's issues may be made.

Child Strategy Statement

581. A Child Strategy Statement has been produced which reminds all Scottish Office Departments of the need to identify and take proper account of the interests of children when developing policy.

Children's Safeguards Review

582. Mr Roger Kent, a former Director of Social Work for Lothian Region, was commissioned in July 1996 to report on safeguards for children living away from home in Scotland. The Kent Report, which parallels the Utting Report (see paragraph 530), was presented to the Secretary of State for Scotland in November 1997. Consultation on its recommendations followed.

583. The Scottish Office Response to the Kent Report was published in November 1998 (Appendix 48). The measures to improve safeguards for children living away from home in Scotland will include:

- Review of child protection committees;
- Promotion of children's rights officers;
- Tightening of regulations in respect of persons who work with children in child care;
- Inspection of foster care service; and
- Improved training for staff in residential child care.

An additional £36.7 million over the next 3 years will be made available to improve children's services in Scotland, £15 million of which will be allocated specifically for implementation of key proposals arising from the Kent Report.

Child Protection

584. Social work departments in Scotland, who have a responsibility to promote and safeguard the well-being of children, may apply to the court for orders to protect children believed to be at risk. For emergency protection of children the Children (Scotland) Act 1995, which came fully into force in April 1997, makes three new orders available to the sheriff. These are:

- The child assessment order, for use when a local authority has reasonable cause to suspect that a child is suffering or is likely to suffer significant harm but where access to the child is being denied;

- The child protection order which authorises the removal of the child from home, for use where the child is thought to be suffering or likely to be suffering significant harm; and

- The exclusion order – to exclude a suspected abuser from the family home.

585. The Act also makes provision for short-term refuges in residential homes or in the community for children at risk of harm who may have run away from home or from their carers because of the risk of harm.

586. Child protection committees, which have a strategic role and have been established throughout Scotland, promote inter-agency collaboration. The Scottish Office issued new guidance in November 1998 to assist agencies in working together against child abuse.

587. The children's hearing system deals with the majority of children in Scotland who offend and plays a significant part in protecting children who may have been abused or who may be at risk of abuse. It is welfare-orientated, focuses on treatment of the underlying reasons for an offending child's behaviour and tackles problems of child abuse and potential abuse.

Children in prostitution

588. The Scottish Office guidance, *Protecting Children: A Shared Responsibility*, issued in November 1998, recognises child prostitution as child abuse. Children involved in prostitution are therefore seen as victims of adult exploitation.

589. A child involved in prostitution in Scotland would be dealt with under the children's hearings system. The hearing would focus on the welfare needs of the child. If it decided that a supervision requirement was appropriate it could attach conditions appropriate to the circumstances of the child concerned.

Under fives/day care

590. The Government has already done much in Scotland to help provide opportunities for children's early development. A free, part-time education place is now available for virtually every Scottish child in the pre-school year whose parents want one; and the Government has committed an extra £138 million over the years 1999-2002 to ensure that, by 2002, pre-school places will be available for all three year olds whose parents want them. Guidance on pre-school learning highlights the importance of supporting children's personal, social and emotional development in the early years through structured play.

591. The Government is also investing heavily in promoting an expansion of childcare provision in Scotland. The Scottish Office will be investing £49 million over the years 1999-2002. In addition, the New Opportunities Fund will be investing £25 million for care out of school hours over 1999-2003. From October 1999, depending on uptake, £20-25 million annually will come into childcare through the new Working Families Tax Credit. While part of the aim of this investment is to help parents take up opportunities to work or learn, good quality childcare can also provide opportunities for young children to develop through play and through socialising with other children. For some disadvantaged children it can provide an element of stability and of stimulation that is not present at home.

592. In addition to the substantial resources being invested in childcare generally in Scotland, the Government is devoting a further £42 million over the years 1999-2002 to expand support for

families with pre-school children. Objectives include providing a stimulating environment for children's development, helping parents to provide a healthy upbringing for their child, and promoting self-esteem and confidence in children and parents. It is recognised that for support to be effective parents must themselves be encouraged to identify what will be helpful.

593. The Scottish Office Departments responsible for education, social work and health prepared joint guidance on implementing this measure, which will require co-operation across several sectors. In most places, support will be provided through family centres but use of mobile resources and childminder networks may be more appropriate in rural areas.

Northern Ireland

The Children (Northern Ireland) Order 1995

594. This came into operation in November 1996. It reforms and consolidates most of the law relating to children along the lines of the Children Act 1989 in England and Wales. Among other things, it requires a guardian *ad litem* (in effect an independent social worker representing the interests of the child), to be appointed in most public law cases involving children.

Children's service plans (CSPs)

595. In July 1998 the Department of Health and Social Services (DHSS) with the Department of Education and the Northern Ireland Office, issued guidance on a new requirement on Health and Social Services Boards to plan children's services. Area Children and Young People's Committees have to be established as a forum for bringing together those bodies most involved with developing services.

Child protection

596. Statutory responsibility for child protection lies with Health and Social Services Boards. The guidance, *Co-operating To Protect Children*, which deals with inter-profession and inter-agency collaboration in child protection, was revised to take account of the 1996 Order. Four Area Child Protection Committees bring together the main agencies concerned.

597. *Our Duty To Care*, a good practice guide, has been produced for voluntary and community organisations working with children. The Pre-Employment Consultancy Service operated by the DHSS provides access to criminal records for organisations wishing to check the suitability of prospective staff and volunteers working with children.

Residential care

598. *Children Matter*, the report of the DHSS's review of residential childcare places in Northern Ireland, was published in October 1998. It set out an Action Plan to restore the number of places to the level that had prevailed in 1996.

Under fives/day care

599. £38 million is being invested in the Pre-School Education Expansion Programme to create over 9,000 new pre-school places by 2001-2202. The aim in the longer term is to provide a year of pre-school education for every child in Northern Ireland.

600. The New Opportunities Fund will make available a further £9.9 million over the next three years to allow for an increase of about 12,000 out-of-school childcare places. In addition, the Training and Employment Agency has set aside £9 million for training workers for the childcare sector.

Article 25 – Participation in public life

Limits on election expenditure and funding of political parties

601. The Government will publish a draft Bill implementing the main findings of the October 1998 report, by the Committee on Standards in Public Life, on the funding of political parties. The report recommended:

- A limit of £20 million on expenditure by political parties in elections to the House of Commons;
- Lesser limits for elections to the Scottish and European Parliaments, and the Welsh and Northern Ireland Assemblies;
- A limit on election expenditure of those people or bodies promoting or disparaging a political party;
- Disclosure of donations above £5,000 to political parties;
- A ban on foreign donations to political parties; and
- An independent Election Commission to enforce these controls.

The Government intends that the legislation should be in force before the next General Election.

Voting rights of prisoners

602. The right of convicted detained prisoners to vote is removed while they serve a custodial sentence. Unconvicted prisoners who are remanded in custody remain capable in law of registering as electors and voting, but their detention can have the unintended effect of making it difficult to qualify for continuing electoral registration. A Ministerial Working Party is considering what can be done to remove the difficulty for unconvicted prisoners, as part of a wider review of electoral procedures, and will make recommendations to the Home Secretary in due course.

Civil Service

603. Further to paragraphs 444-445 of the Fourth periodic Report, an independent Security Vetting Appeal Panel was put in place in 1997 to hear appeals from those who have had their security clearance withdrawn or refused and who have exhausted the appeal mechanism within their own organisation.

Ethnic minorities in public life

Parliament

604. Nine of the 659 Members of Parliament, elected in May 1997, are of ethnic minority origin.

Judiciary

605. The Lord Chancellor appoints or recommends for appointment to the judiciary those who best satisfy statutory and other criteria. To encourage more applications from women and members of ethnic minorities he is introducing:

- More flexible part-time sittings;
- A higher upper age-limit for appointment as an Assistant Recorder; and
- Work-shadowing and mentoring schemes.

The Lord Chancellor has emphasised that he is ready to investigate any claim of discrimination in the judicial appointments.

606. At 1 June 1999, there were believed to be 5 circuit judges (0.9 per cent of the total), 13 recorders (1.5 per cent) and 14 assistant recorders (3.4 per cent) of ethnic minority origin.

607. All appointments of sheriffs in Scotland are advertised and anyone with the minimum legal qualifications may apply. Appointments of judges to the Supreme courts arise only rarely and are not advertised. The Scottish Executive which assumed powers on 1 July 1999, has given a public commitment to consult widely on the current arrangements for judicial appointments.

Lay magistracy

608. In 1998, 105 (6.5 per cent) of those appointed to the lay magistracy were of ethnic minority origin.

Police Service

609. In 1993, there were 1,248 ethnic minority police officers. In 1998, this had risen to 2,518, 2 per cent of the force, while ethnic minorities represent 7 per cent of the population. There is one ethnic minority officer above the rank of Chief Superintendent. The Home Secretary has made a public commitment on the recruitment, retention, promotion and specialist opportunities for black and Asian police officers. Targets for recruitment, retention and promotion, reflecting the ethnic minority composition of each police authority area, have been set.

610. The Home Office has provided funding for the Black Police Association. Its aims are to:

- Improve the working environment of black police personnel;
- Advise and consult on matters of racism;
- Influence the direction of policy nationally; and
- Build up relationships with other black organisations.

Probation Service

611. In December 1997, 8.6 per cent of probation officers in England and Wales belonged to an ethnic minority group. Targets for recruitment, promotion and retention of ethnic minority staff have been set.

Prison Service

612. On 31 January 1999, 2 per cent of prison officers and governors were from an ethnic minority group and the Service had appointed its first ethnic minority governor. On 1 February 1999, the Prison Service Racial Equality Programme was announced. It focuses on staff issues including recruiting ethnic minority staff. Action in the coming year to increase ethnic minority representation includes appointing a Racial Equality Adviser and re-establishing an outreach team (to help recruit ethnic minority staff). Targets for the recruitment, promotion and retention of ethnic minority staff have been set.

Public bodies

613. In 1998, 3.7 per cent of appointments to public bodies were held by persons of ethnic minority origin, compared with 2 per cent in 1992.

Civil Service

614. In 1998, 5.7 per cent of the non-industrial staff of the Civil Service were of ethnic minority origin.

Armed Forces

615. On 1 December 1998, ethnic minorities represented about 1 per cent of the strength of the Armed Forces (Naval Services 0.8 per cent, Army 1.1 per cent, RAF 1.1 per cent). There are 2,184 people from ethnic minorities in the Armed Forces, of whom 336 are officers. From April 1998 the goal was that 2 per cent of all new recruits would be from ethnic minorities, rising to 5 per cent by March 2002.

Schools

616. The Government is firmly committed to equal opportunities for all school teachers. The Department for Education and Employment is investigating methods of collecting reliable data on the ethnic origin of school teachers and will, in dialogue with the Commission for Racial Equality, develop policies to increase the number of ethnic minority teachers in England and Wales.

617. The percentages of pupils according to ethnic group in 1998 were as follows:

Origin	Primary Schools	Secondary Schools
White	88.4	88.7
Black Caribbean	1.6	1.4
Black African	1.1	0.9
Black Other	0.8	0.7
Indian	2.3	2.7
Pakistani	2.4	2.6
Bangladeshi	1.0	0.9
Chinese	0.3	0.4
Other Ethnic Minority	2.0	1.7

Further and Higher Education

618. Of the 3.6 million students in further education in England for whom information on ethnicity was collected in academic year 1996-1997, 76 per cent were white, 11 per cent from ethnic minority groups, and 13 per cent of unknown ethnicity.

619. In the academic year 1996-1997, 12 per cent of the 1.3 million higher education students and 4 per cent of the 87,000 academic staff for whom ethnic origin in known, were from ethnic minorities.

Women in public life

Parliament

620. In July 1999, 121 Members of Parliament, 18 per cent of the total, were women.

The Government

621. In July 1999, five out of 22 members of the Cabinet were women.

Local Government

622. 28 per cent of local councillors in England, and 20 per cent in Wales, are women.

Judiciary

623. At 1 June 1999, one Lord Justice, 8 High Court judges, 37 circuit judges, 79 recorders and 67 assistant recorders were women, representing 9.7 per cent of the judges in those levels of the judiciary.

Lay magistracy

624. At 1 January 1999, 49 per cent of lay magistrates were women.

Police Service

625. On 15.7 per cent of the 125,846 police officers in England and Wales are women, and 467 women officers are above the rank of sergeant.

Probation Service

626. At the end of 1998, 55 per cent of probation officers were women.

Prison Service

627. On 31 January 1999, 25 per cent of the Prison Service staff, and 13 per cent of governor grades in England and Wales were women.

Public bodies

628. In 1998, 32 per cent of appointments to public bodies were held by women, compared with 26 per cent in 1992, and 19 per cent in 1986.

Civil Service

629. The percentage of civil servants who are women has stayed constant at 51 per cent since 1994, but women now form a greater proportion of those in the higher grades and a lower proportion in the lower grades than they did in 1994.

Armed Forces

630. On 1 December 1998, there were 16,227 women in the Armed Forces, 7.7 per cent of the total. 73 per cent of the posts in the Naval Services, 70 per cent in the Army and 96 per cent in the RAF are open to women (see paragraph 107).

Further and Higher Education

631. Of nearly 4 million students in further education in England in 1997-1998, 56 per cent were women. Of the 1,586,800 home students in UK higher education in 1996-1997, 54 per cent were women.

Northern Ireland

Local Government

632. The elections in Northern Ireland in 1997 raised the proportion of district councillors who were women to 15 per cent, compared with 11 per cent in 1993.

Civil Service

633. The percentage of women in the senior grades of the Northern Ireland Civil Service steadily increased between 1993 and January 1998. At administrative Grade 7 it grew from 12.6 per cent to 15.3 per cent in January 1998. At the higher levels, it has increased from 5.7 per cent to 9.3 per cent, against a target of 10 per cent for the end of 1998.

Article 27 – (Minority rights)

Non-indigenous minority languages

634. The Government's policy is that English should be the medium of teaching in state schools. Without a grasp of English, children will not be able to take full advantage of the opportunities schools offer. It would not be practical to teach the National Curriculum in the 200 odd non-indigenous minority languages (60 in some schools) of school-children. Extra teaching, including bilingual teaching, is provided for schools with children whose first language is not English. Children may be able to study their mother tongue at secondary level as part of the National Curriculum.

635. The Government recognises the benefits of cultural and linguistic diversity but believes the main responsibility for maintaining it lies with the minority communities themselves. Many set up their own schooling and Local Education Authorities may help them do so.

Indigenous minority languages

636. The Government has announced its intention of signing and ratifying the Council of Europe Charter for Regional or Minority Languages. Signature of the Charter commits the Member State to the principles set out in Part II of the Charter in support of all its indigenous minority languages, ratification to a range of specific measures, selected from a list in Part III of the Charter, to support specific languages. Welsh in Wales, Gaelic in Scotland, and, at an early date, Irish in Northern Ireland will be specified.

Gaelic and Scots in Scotland

637. The Government is stepping up support for Gaelic, the Celtic language of Scotland, by:

- Granting Scottish local authorities £2.434 million for Gaelic-medium education (The scheme was introduced in 1986 and now supports Gaelic-medium primary teaching of 1,816 pupils in 56 schools.);
- Supporting Sabhal Mor Ostaig, the Gaelic college on the Isle of Skye, with more than £0.65 million a year;
- Granting Gaelic organisations £0.6 million in 1999-2000, of which £300,000 is for Comunn na Gaidhlig (the development body for Gaelic);
- Giving £8.5 million a year for the Gaelic Broadcasting Committee to fund television and radio programmes in Gaelic, and as stated;
- Announcing its intention to sign the Council of Europe Charter for Regional or Minority Languages and of specifying Gaelic in relation to Part III.

638. The Government provides opportunities through the education system for the appreciation of Scots literature and the Scots language. Scots is of the same family of languages as English.

Irish and Ulster-Scots in Ireland

639. In 1997-1998, Government and public sector support for programmes related to the Irish language amounted to £3.8 million (excluding provision for the teaching of Irish in English-medium schools), and the Central Community Relations Unit granted £108,000 for Ulster-Scots.

640. The Department of Education for Northern Ireland is required to encourage and facilitate Irish-medium education, and there is provision for funding an Irish-medium education promotional body (Education (Northern Ireland) Order 1998). The curriculum for secondary school pupils enables them to study Irish instead of one of the major European Union languages.

641. A district council may put up a second nameplate in a language other than English in a street, having consulted those who live there (Article 11 (2) of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1995).

642. The Belfast Agreement (see paragraph 12]) recognises the importance of Irish (the Celtic language of Ireland), Ulster-Scots (or Ullans, a variety of the Scots language), and the various ethnic minority languages in Ireland. Provision for Irish and Ulster-Scots in Northern Ireland meets the requirements of Part II of the Charter. An agreement, signed by the British and Irish Governments in March 1999, provides for a language implementation body which will have two

parts: an Irish Language Agency in Dublin with an office in Belfast, and an Ulster-Scots agency in Belfast, possibly with an office in Donegal in the Irish Republic. The body will have these functions:

The Irish Language Agency

- Promoting Irish, and supporting Irish-medium education and the teaching of Irish on both sides of the border;
- Encouraging its use in speech and writing in public and private life in the South and, in the context of Part III of the Charter, in Northern Ireland where there is appropriate demand;
- Advising both administrations, public bodies and groups in the private and voluntary sector;
- Supporting projects and grant-aiding bodies and groups;
- Undertaking research, promotional campaigns and public and media relations; and
- Developing terminology and dictionaries.

The Ulster Scots Agency

- Promoting greater awareness and use of Ullans and of Ulster-Scots culture throughout the island.

Welsh in Wales

643. The Welsh Language Act 1993 established the Welsh Language Board, a non- departmental public body, to promote the use of Welsh. The Welsh Office granted the Board £5.8 million in 1998-1999. The Board has to approve schemes implementing the principle in the Act that English and Welsh languages should be treated equally in the conduct of public business and the administration of justice in Wales. It investigates complaints that public bodies have failed to carry out schemes approved by the Board. The Board also supports the Welsh nursery schools movement, which received a grant of £542,000 in 1998-1999.

644. The Qualification, Curriculum and Assessment Authority for Wales has statutory responsibility for the curriculum and for qualifications in Wales. It has a major responsibility for implementing the Government's policies on teaching of Welsh and through the medium of Welsh. It also advises the Government on the use and future development of Welsh-medium education. The Government intends that organisations with responsibilities for Welsh-medium education and for the language in general (including the Welsh Language Board and ACCAC) should work closely together.

645. Since 1981, Sianel Pedwar Cymru (S4C, the Welsh Fourth Channel) has been the sole television broadcaster in Welsh. In 1998, S4C expanded its Welsh service to 12 hours a day, using its new digital channel. S4C receives a Government grant of about £75 million a year. The BBC provides its own Welsh radio channel, Radio Cymru, which broadcasts about 18 hours a day. Several weekly or monthly Welsh papers are published, and English language newspapers often carry articles in Welsh, sometimes specifically aimed at learners. Government funding, through

the Arts Council for Wales, supports a large number of Welsh language activities, including theatre, music and literature.

646. The UK Government's intention is that the National Assembly for Wales (see paragraphs 16-17 above) should be fully bilingual. As stated, the Government has announced its intention to specify Welsh for the purposes of Part III of the Charter.

APPENDICES TO THE REPORT OF THE UNITED KINGDOM

Documents submitted to the Committee

Introduction

1. *Review of Human Rights Instruments (Amended)*. Home Office, August 1999.

Article 1

2. *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, Belfast 10 April 1998*. Published by the Stationery Office, 1999. Cm 4292.

3. *Northern Ireland Act 1998*. Published by the Stationery Office, 1998.

4. *Scotland's Parliament*. Published by the Stationery Office, 1997.

5. *Scotland Act 1998*. Published by the Stationery Office, 1998.

6. *A Voice for Wales: The Government's Proposals for a Welsh Assembly*. Published by the Stationery Office, 1997. Cm 3718.

Article 2

7. *Annual Report of the Commission for Racial Equality 1998*, 1999.

8. *Chapters 45 and 46 of the Stephen Lawrence Inquiry Report*. Published by the Stationery Office, March 1999.

9. *Stephen Lawrence Inquiry. Home Secretary's Action Plan*. Published by the Home Office, March 1999.

10. *Statistics on Race and the Criminal Justice System 1998*. Available from the Home Office, Information and Publications Group.

11. *Police and Criminal Evidence Act 1984: Code of Practice (A) on Stop and Search*. Published by the Stationery Office, 1999.

12. *In this Together. Tackling Racial Incidents: Good Practice in Multi-Agency Working*. Produced by the Home Office, October 1998.

13. *Winning the race. Policing Plural Communities*. HMIC Thematic Inspection Report on Police Community and Race Relations 1996-1997. Published by the Home Office, 1997.

14. *Winning the Race. Policing Plural Communities Revisited*. A follow-up to the Thematic Inspection Report on Police Community and Race Relations 1998-1999. Published by the Home Office, March 1999.

15. *Prison Service Order on Race Relations*. Issued February 1997.

16. "Labour market participation of ethnic groups", *Labour Market Trends*, December 1998.

17. *Race Relations (Northern Ireland) Order 1997.* Published by the Stationery Office, 1997.

18. *Employment Equality Building for the Future.* Published by the Stationery Office, 1997. Cm 3684.

19. *Partnership for Equality.* Published by the Stationery Office, 1998. Cm 3890.

20. *Fair Employment and Treatment (Northern Ireland) Order 1998.* Published by the Stationery Office, 1998.

21. *Disability Discrimination Act 1995.* Published by HMSO, 1995.

22. *Promoting disabled people's rights: Creating a Disability Rights Commission fit for the 21st Century.* Published by the Stationery Office, 1998.

Article 3

23. *Code of Practice on Equal Pay.* Published by the Equal Opportunities Commission, 1997.

24. *Removing Sex Bias from Recruitment and Selection.* Published by the Equal Opportunities Commission for Northern Ireland, 1995.

25. *Code of Practice on Equal Pay.* Published by the Equal Opportunities Commission for Northern Ireland, 1999.

26. *Domestic Violence: Break the Chain.* Published by the Home Office, January 1999.

27. *Protection from Harassment Act 1997.* Published by the Stationery Office, 1997.

28. *Annex A of Crime and Disorder Act 1998.*

29. *Scottish Partnership on Domestic Violence: Workplan.* April 1999.

30. *Speaking Up For Justice.* (Report of the Interdepartmental Working Group on the treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System.) Published by the Home Office, June 1998.

Article 4

31. *Legislation Against Terrorism.* Published by the Stationery Office, 1998. Cm 4178.

Article 7

32. *Violence. Reforming the Offences Against the Person Act 1861.* Available from the Home Office, Sentencing and Offences Unit, 1998.

33. *Fifth Annual Report of the Independent Assessor of Military Complaints Procedures in Northern Ireland 1997*, 1998.

34. *Sixth Annual report of the Independent Commissioner for the Holding Centres.* Submitted to the Secretary of State for Northern Ireland, 31 March 1999.

Article 13

35. *Fairer, faster and firmer – a modern approach to immigration and asylum.* White Paper, July 1998.

Article 14

36. *Review of Delay in the Criminal Justice System.* Published by the Home Office, February 1997.

37. *Royal Commission on Criminal Justice: Final Government Response.* Published by the Home Office, 1996.

38. *Determining Mode of Trial in Either-Way Cases.* Published by the Home Office, July 1998.

39. *Juries in Serious Fraud Trials.* Published by the Home Office, February 1998.

Article 19

40. *Code of Practice on Access to Government Information.* Second Edition, 1997.

41. *Your Right to Know.* Published by the Stationery Office, December 1997. Cm 3818.

Article 24

42. *Working Together To Safeguard Children: New Government Proposals for Inter-Agency Co-operation.* Published by the Department of Health, February 1998.

43. *Child Protection: Messages from Research.* Published by HMSO, 1995.

44. *People like us* (Summary Report of The Review of the Safeguards for Children Living Away from Home by Sir William Utting). Published by the Department of Health, November 1997.

45. *The Government's Response to the Children's Safeguards Review.* Published by the Stationery Office, November 1998. Cm 4105.

46. *Children Looked After by Local Authorities.* Published by the Stationery Office, December 1998. Cm 4175.

47. *Children involved in Prostitution* (draft guidance from the Home Office and the Department of Health). December 1998.

48. *The Scottish Office Response to the Children's Safeguards Review.* Published by the Scottish Office, November 1998.